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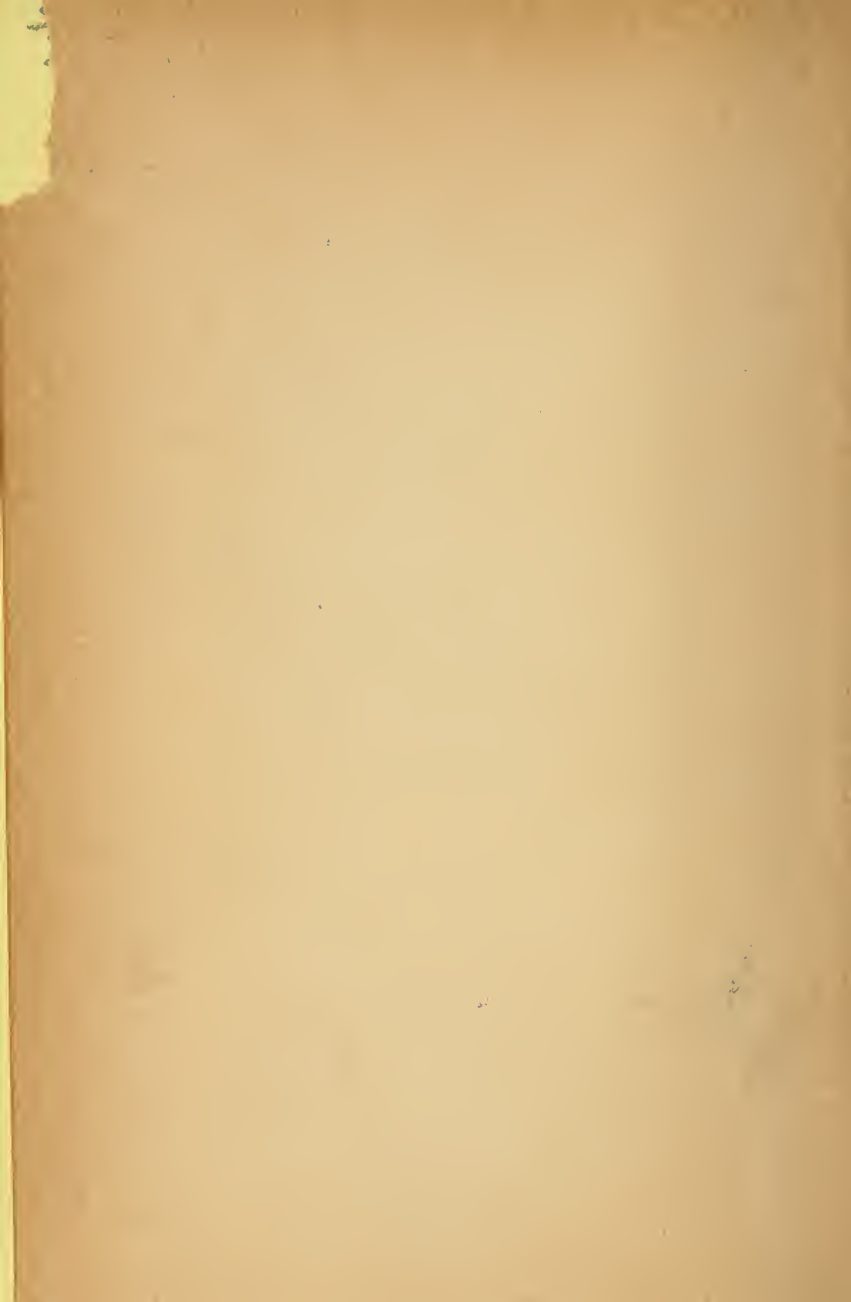
THE
CORRUPT & ILLEGAL PRACTICES
PREVENTION ACT, 1883.

ERNEST A. FOLF

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THE
CORRUPT AND ILLEGAL PRACTICES
PREVENTION ACT, 1883.

[46 & 47 Vict. c. 51.]

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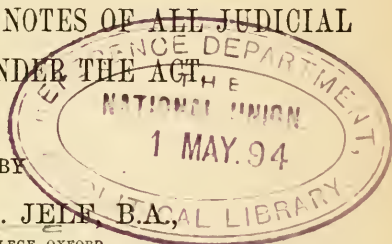
AN INTRODUCTION AND NOTES OF ALL JUDICIAL
DECISIONS UNDER THE ACT.

BY

ERNEST A. JEFF, B.A.,

OF NEW COLLEGE, OXFORD,

AND A BARRISTER-AT-LAW OF THE HONOURABLE SOCIETY OF THE INNER TEMPLE.



"Nemo coronabitur qui non legitime certaverit."

LONDON:

SWEET AND MAXWELL, LIMITED,
3, CHANCERY LANE.

DUBLIN: HODGES, FIGGIS & Co. LD. and E. PONSONBY.

EDINBURGH: W. GREEN & SONS.

Law Publishers and Booksellers.

1894

LONDON:

PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE, E.C.

PREFACE.

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THE favourable reception which was given to my Paper in the *Law Times*—here reprinted, by kind permission of the Proprietors, as an introductory Chapter—has led me to attempt the present edition of the Act. It would be difficult to exaggerate the importance to Candidates and their Election Agents of some knowledge not only of the Statute Law on these matters, but also of the now considerable body of judicial decisions thereunder. These will be found here fully noted up to the present date; and I have added an excursus on the peculiar “Parliamentary Common Law of *Agency*,” in which I have collected all the Leading Cases on that most difficult subject.

The attention of legislators is especially directed to pages 23 to 26, in the hope that the much-needed reform there adverted to will receive their early consideration.

ERNEST A. JELF.

9, KING'S BENCH WALK.

April, 1894.

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THE
CORRUPT AND ILLEGAL PRACTICES
PREVENTION ACT, 1883.

INTRODUCTORY CHAPTER.

*THE ACT AS ILLUSTRATED BY THE LAST YEAR'S
ELECTION PETITIONS.*

IN the summer months of 1883 the important Bill which is connected with the name of Sir Henry James (the then Attorney-General) was debated at some length in the Houses of Parliament. It was agreed on all hands that some provision to secure a higher degree of purity at Parliamentary elections was greatly needed: but the remedy proposed was thought by many to be severer than was needful, and likely in practice to fall hardly on the most innocent of candidates. "You are now proposing," said one opponent of the Bill (Hans., vol. cclxxix., p. 1653). "to pass a most cruel law—not for the criminal classes, but for men who wish to fight an election fairly. Under this Bill an honest man will be afraid to stand, while the dishonest man will triumph." And the same thing was reiterated in various ways through weary weeks of long deliberation.

At last, on August 23, 1883, the Bill became law, and from that date those who are interested in the preventing of corruption at elections began to look closely and anxiously, to see what results the new law would bring about. For some while the chief result was mere perplexity: election petitions were rare: defeated candidates hesitated to make trial of the newly-made machinery, whereby alone lost honours were to be regained and grievances against rivals in politics redressed. The Act was not understood: and men would not play a game of which they did not know the rules. But gradually this state of things passed away. Experiments were made, and made successfully; and others were encouraged to try their fortune too. Accordingly, the General Election of 1892 was fruitful in illustrations of the working of this Act—so fruitful that the judges, who have lately retired from the duties of administering this portion of the law, have tried no fewer than a dozen petitions (*a*) during their year of office in England and in Ireland. In all of these cases the petition set forth offences under the Act of Sir Henry James, though in one case—that of Cirencester—these were abandoned before trial, and the petitioner relied on other grounds for his attack.

The decisions of the remaining eleven cases all depended on this Act, and almost every part of it was touched by one or other of them; so that now, for the first time, it is really possible to form some judgment of the utility of the

(*a*) See return to an order of the House of Commons, dated February 2, 1893, giving copy shorthand-writers' judgments in the controverted elections, and further return to order of same date. (Parliamentary Papers, 25 and 25(1).)

machinery which was introduced in 1883. These eleven cases were those of Hexham, East Clare, the two divisions of Meath, the Montgomery Boroughs, Walsall, Worcester, Rochester, Stepney, East Manchester, and Pontefract. In six cases the petition was successful: in one the judges differed, whereby the sitting member kept his seat: in one they found illegal practice, but condoned it under their special powers: in the other three they found for the respondents on the facts.

What, then, shall we say on looking at these cases? Is it a severe and cruel law calculated "to make an honest man afraid to stand"? Another general election may be near at hand, and the question is, therefore, of the gravest consequence. The election law of England, now brought to its highest perfection by Sir Henry James's Act, is undoubtedly most stringent, and here and there an honest man may feel the sting of it for all his honesty. But the policy of the law requires a diligence, a circumspection, a something more than honesty in those who deal with matters so important to the public weal. If a common carrier must sometimes pay for the loss of goods which he for his part did his best to carry with all safety: and a seller of food and drugs be criminally responsible for the adulteration of articles which he at least did not by will or deed adulterate (and this because of the importance to the public of its being able to utterly rely on those who carry on these businesses), is there not something to be said for binding a Parliamentary candidate with bonds at least as tight?

The principle which gives the law its real severity, and which is said to make it formidable even to an innocent candidate, is a principle altogether independent of the Act

of 1883—the principle by which the Court determines who are the agents of the candidate. But for this, all that part of the Act which deals with corrupt practices would, of course, be without terrors to the innocent candidate. What would such an one have to fear from a punishment which could only fall on “any person who corruptly” does this or that, “for the purpose of corruptly influencing” and so forth, were it not for the added words which make the section read “who corruptly by himself or any other person” does these things?

“The doctrine of agency,” said an opponent of the Bill before it became law, “has been pushed to its extreme limits. If the candidate is speaking to anyone, it almost makes the man his agent.” This principle has long obtained in election petitions. It was upon this principle that the committees of the House acted in deciding such questions—those committees whose principles, practice, and rules in the matter are still to be observed by the express words of statute 31 & 32 Vict. c. 125, s. 6. Sir Henry James’s law, therefore, introduced no new oppression in this respect. It has not invented the liability; but the liability has assumed a more serious aspect in view of some of the provisions of the Act. The offence of “corrupt treating” under the Act is the chief cause of this. There is no small portion of the inhabitants of our islands whose lives are largely made up of treating and being treated. Fortunate, indeed, is the candidate who numbers no such persons among his agents. The election petitions of 1892-3 have been fruitful in illustrations of this danger.

To quote Mr. Justice Wills: “There is inherent in a great many people, with whom we have had to deal in this inquiry, the habit of giving and accepting drinks; it is as

natural for them to treat and be treated, as it is to have their breakfast or their dinner, or anything else that forms part of their daily life; and to suppose that such habits would be dropped at election time is preposterous." Not a few seats were lost or imperilled by the fact that the candidate had agents among this class of men. And, although it would be an exaggeration to say that "speaking to a man" would make him your agent, yet, in a crisis when a man must make all the honest friends he can, and accept all the help that is offered him in good faith, it is difficult not to find some of these would-be friends among the class to whom Mr. Justice Wills refers. And then those habits, which it would be so preposterous to expect them to drop at election time, prevail once too often; and by imperceptible degrees the offence of "corrupt treating" is approached. For it is no more possible for these people in practice to separate the questions, which ought to be so completely distinct—"How are you going to vote?" and "What are you going to drink?"—than for a local cricket club to play together unless it may dine together too. How is the candidate to fight an election without some agents of this class? For it may oftentimes include the chief proportion of the constituency.

But then, on the other hand, how, but by some such enactment as this, could a monstrous abuse have been done away? At a general election like the last one, political opinions were very near to being equally divided. And could anything be more disgraceful than that "glasses round" in public-houses throughout the country should decide the terrible issues which lie before us now? Yet there are men to whom these grave matters are of less moment than a glass of gin in a time of thirstiness; and

the "poor voter," whom the late Mr. Whittier imagined proudly exclaiming on the polling-day,

"The wide world has not wealth to buy
The power in my right hand,"

is a very different man from some of the real-life "poor voters" at Hexham, Montgomery, or Rochester.

It must, therefore, be acknowledged that the author of the Act had a very difficult problem before him—to protect the purity of elections on the one hand, and on the other to avoid punishing candidates, who have done their very best in the cause of such purity, for things which were utterly beyond their control. But this problem was dealt with in a masterly manner. The most brilliant idea of the Act is that of sect. 22, enabling the Court to exonerate an innocent candidate, in certain cases, from the consequences of disobedience to what the Act prescribes, when the candidate himself and his election agent have done nothing against the law themselves, when they have taken all reasonable means to prevent offences, when the offences are trivial, unimportant, and limited, and when the election is otherwise pure. The notion of this proviso seems to have originated in a suggestion made by the late Lord Bramwell (*Hans.*, vol. cclxxix. p. 1691), when examined by a Royal Commission on this subject. Mr. Justice Vaughan Williams took pains to make it clear that the judges' administration of the Act does not operate hardly upon candidates. "It is of all things essential," said he, "that those who stand for Parliament should feel that the success or failure of a petition against them does not depend upon matters which are beyond their control. If it were felt that it were so, one would find that honest citizens,

who respected themselves, would decline to stand for Parliament at all. No one, with proper self-respect, would submit himself to the chance of being unseated after he had been elected, by reason of matters for which he was in no way responsible." The member for Rochester was unseated, because he failed to prove that he and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at the election. It is here to be noticed that the candidate is responsible for the doings of his election agent equally with his own. This is only common sense: for it is he who really conducts the business of the candidature: the candidate has trusted all to him, and to excuse his defaults would be beyond the scope of reasonable clemency. In every case which he tried, Mr. Justice Vaughan Williams had a good word for the Act with regard to its bearing on an innocent candidate. "I do not believe," he said in the Stepney case, "that these Acts, when properly construed, contain any pitfall or trap whatsoever for any candidate who determines to conduct his candidature honestly and carefully." So again at Hexham he would not have it said that the question of guilt or innocence upon a charge of "corrupt treating" could be a question of law. "It is not a question of law," he said: "it is a question of fact. Let the candidate feel that, if he personally *carefully* avoids corruption, and *carefully* chooses his agents, and *carefully* supervises their conduct on his behalf, he will not be stigmatised as a party to an impure election, or suffer the consequences of the misconduct of others." The inference from this is that, if parties innocent of wilful corruption are ever punished, it is for their *carelessness*. For carelessness in things so important is most reprehensible: it is, in its own

degree, analogous to the carelessness that causes another's death, and that is the felony of manslaughter.

There is one thing that no section in the Act gives the Court any power to condone, however trivial and unimportant, however much against the wishes of the candidate and his election agent. This thing is actual or attempted (17 & 18 Vict. c. 102, s. 2) bribery. The reason of the distinction is obvious: the giving and receiving of money is much more significant than that of food or drink. The habit of giving and accepting money, without the passing of money's worth, is not inherent in the nature of humanity; this is not as natural as breakfast or dinner in any class; and if this is done in a place where canvassing is going on, it is in itself suspicious. Prove this to have been done by an agent of the candidate, prove its corrupt motive, and how could it be excused? But the danger to a candidate of an agent doing this unpardonable thing must be remembered, as against the picture of security enjoyed under this Act by an innocent candidate which Mr. Justice Vaughan Williams draws.

For see what happened at Pontefract. There an agent of the candidate, utterly without the candidate's knowledge, paid a voter certain moneys for attending to vote. (It was left an open question whether this was bribery pure and simple or an illegal payment of a railway fare, which would fall under a later section of the Act.) Sir Henry Hawkins said: "One cannot help it: one must deal with the facts as one feels they ought to be dealt with, and, much as I regret it, I am bound to come to the conclusion that the member must lose his seat. He owes his disagreeable position entirely to the corrupt act of a person who, unfortunately, had been constituted his legal agent. No

imputation of any sort or kind rests upon him." And Mr. Justice Cave said that he "to some extent shared the regret expressed by his brother."

There was another case in which the sitting member came perilously near to losing his seat by reason of bribery, of which he knew nothing, on the part of a person unfortunately his legal agent. The vice-chairman of one of the election committees, which the respondent member for the Montgomery boroughs had made his own, was said, during a bout of heavy drinking, to have tendered first one 6*d.* and then another 6*d.* to a voter, and, at the same time, to have asked the man for his vote. Mr. Justice Wills thought that these facts were proved; and indeed, so far, Mr. Baron Pollock seems to have agreed with him. "Such a vice-chairman," argued petitioner's counsel, "must be an agent: an agent has bribed: the seat is lost." "Not so," it was contended on the other side; "there can be no corrupt motive when there is no corrupt mind, and no corrupt mind when there is no mind at all. Therefore, although this man may have been an agent, he did not commit any corrupt practice. If the candidate himself had done the same thing, in the same condition, it would not have been corrupt." Mr. Baron Pollock, the senior member of the Court, did not quite take either of those views. But he put it in this way. It was proved that this vice-chairman was at normal times an honest and respectable man, trusted in business matters by persons of all classes around him. The election agent had sworn he knew nothing of his habits of intemperance; it was impossible to hold that this man had been made an agent for bribery; if the candidate and his election agent had known of his frailty, this very knowledge would have prevented them from selecting him

to do one of the very nicest acts of criminality that are probably known to mankind. It was not the proper view that this vice-chairman was either furnished with money to bribe, or with his own money set about bribing others : therefore he found as a fact there was no bribery. Mr. Justice Wills was reluctantly opposed to this "the milder, the more gentle, the more charitable conclusion," and held that the election should be avoided for the corrupt giving of those two sixpences ; but he does not view this as a misfortune falling on the candidate by operation of the law. He "could not help saying that it was a most reprehensible selection of an agent, the consequences of which ought to recoil upon those who have been guilty of such culpable carelessness." Thus in neither judge's view was it right—or the law—that an innocent candidate should suffer. The one said that he should not suffer: the other that he was not, in the true sense, innocent.

It is rare, in fact, for a candidate to lose his seat under this Act, by reason of bribery of which he personally is adjudged utterly innocent : yet the judgments at Pontefract seem to show that it was so in that case, and, at any rate, it would be too much to say that the Act makes this impossible. The candidate in all innocence might ask his own familiar friend, whom he trusted, to canvass for him, a person of good character and blameless reputation. But the chronicles of breach of trust remind us that character and reputation are occasionally deceptive, insomuch that the most intimate friends and the closest kinsfolk are sometimes duped by the fraudulent trustee ; and, if such an one corruptly gave a single penny to buy a poor man's vote, there is no machinery in the Act to relieve the candidate from the consequences of his wrong-doing, however

trivial. It is, therefore, quite possible for an election to be set aside from circumstances beyond the candidate's control. But the case imagined is a hard one, and it would be impolitic to change the law to meet it.

Next, after bribery and treating, the statute deals with "undue influence," which briefly is "the inflicting or threatening of temporal or spiritual injury for the purpose of influencing votes." The most important of the recent cases which depended on this portion of the Act were those decided in *co. Meath*. "Temporal or spiritual" injury! It was with the latter that the court here had most to do. For in this part of the country the real battle was fought by and against the priests. Not that the priests were beyond suspicion of threatening and inflicting even temporal injuries in the cause they had at heart. Their black-thorns do figure in the evidence; but the most important part of these contests referred, of course, to their use of "spiritual" weapons.

Here we are on the threshold of one of the most difficult provinces in all jurisprudence. Bentham himself was perplexed as to the way in which the legislator ought to regard the religious sanction. "The sovereignty," he says (*Theory of Legislation*, Part IV., chap. 18), "is divided between two magistrates, the spiritual (as he is called) and the temporal. The temporal sovereign is in perpetual danger of seeing his authority disputed or snatched away by his rival. We find in history a picture of the effects which result from such a struggle. The temporal magistrate commands such and such an action, the spiritual magistrate forbids it. Whichever side the citizens take, they are punished by the one side or the other—proscribed or damned—they are placed between the fear of the gallows

and the dread of hell fire." But this rivalry, as manifested in the evidence given before the election judges in co. Meath, appeared in a very different light to that in which we have seen it oftenest in history. For there we most frequently find that the temporal prince is the usurper, issuing his commands with regard to matters of conscience and faith, where the spiritual authority would more fitly be supreme. In the co. Meath elections, it was the spiritual prince who was the usurper. The parish priest is the sovereign power to whom the Irish peasant looks in matters of religion; let it be so, but his civil franchise is a very different thing. This must, for the State's sake, be beyond the dictates of hierarchy: in these matters the law of Parliament must be obeyed: these are "the things that be Cæsar's."

The law with regard to elections has only gradually recognized this evil. Sir Henry James's Act is the first statute that has attempted to deal with it. The definition of "undue influence" in sect. 5 of stat. 17 & 18 Vict. c. 102, says nothing about "spiritual" injuries. And it was not until comparatively late years, as Mr. Justice O'Brien points out in his South Meath judgment, that any trace is to be found in the common law of any endeavour to restrain "merely moral agencies" in these respects. The fact is that, so lately as April, 1853, the law was that, where the undue influence was of a spiritual sort, it would not affect the seat. For, a Parliamentary committee of that date, consisting entirely of Protestants, passed two simultaneous resolutions for report to the House (2 Power, Rodwell and Dew, 201). First, "that the respondents are duly elected knights of the shire to serve in this present Parliament for co. Mayo." Second, "that it appears from

evidence given before the committee that there was a great abuse of spiritual influence, on the part of a great body of the Roman Catholic priesthood, during the last election for co. Mayo." Four years later a second Mayo case (1 Wolferstan and Dew, 1) came before another of these committees. Spiritual intimidation was once more a prominent part of the petitioner's case. It was sworn that one priest, who was present but not called at the hearing, made a speech saying that the candidate, whom he was opposing, had sold his country, his body, and his soul, yet he had now the presumption to come and ask for their support. "But believe me," he added, "the curse of God will follow every man that gives it him." The committee found spiritual intimidation as before; but this time they avoided the election in consequence, and moreover the priest quoted above was prosecuted for his offence, though his language was mild compared with that used in 1892 by the priests of co. Meath.

The law was still in this unsettled state when the Parliamentary Elections Act, 1868, was passed, under which the trial of these petitions was intrusted to a judge of the High Court. Very soon in Ireland the judges had occasion to deal with this matter. Mr. Justice Keogh at Galway (1 O'Malley and Hardcastle, 303) in 1869, and Mr. Justice Fitzgerald at Longford (2 Id., 7) in 1875, had to try important cases in which the question was raised. And the law as laid down by them was in substance this: that it is the undoubted right of the clergy to canvass and induce persons to vote in a particular way, but it is not lawful to declare it to be a sin to vote in a different manner, nor to threaten to refuse the sacraments to a person for so doing.

Thus stood the law when Sir Henry James's Act was passed to clear up any doubt which might remain upon this subject. Mr. Justice Fitzgerald had thought the language of sect. 5 of statute 17 & 18 Vict. c. 102, defining "undue influence," wide enough to embrace almost every case of improper influence, whether by physical intimidation or otherwise. The present definition, however, is undoubtedly an improvement; for undue influence is thereby distinctly defined, so as to include the inflicting or threatening of spiritual injury.

One uncertainty remains. How about the holding out of spiritual hope for the purpose of influencing voters? It is suggested by the judgment in the Longford case, that this also would be "undue influence." That question did not arise for judgment in *co. Meath*; and it is still an open matter under the Act of 1883. It is clear that the section does not expressly meet this case; but it would probably be regarded as within the spirit of the common law.

It was, perhaps, because the holding out of heavenly hope seemed less likely to induce the voters of *co. Meath* to support the Church's nominee, than were the terrors of its opposite to deter them from supporting his adversary, that the priests in that county preferred the latter method. The two petitions of 1892 showed that the activity of the priesthood at elections had not diminished since the days of the Parliamentary committees. "The Church," says Mr. Justice O'Brien, "became converted for the time being into a vast political agency, a great moral machine, moving with the resistless influence of united action and a single way. Every priest who was examined was a canvasser. The canvass was everywhere, on the altar, in the vestry, in

the roads, in the houses. The presence of the priest would be a strong moral influence, and a check upon cowards and traitors; but it was an influence undoubtedly attended with distinct danger to the freedom of the voter." "Freedom of election," says Mr. Justice Andrews, "is at common law essential to the validity of an election. The statute law not only leaves this common law principle intact, but supplements it by stringent enactments."

Of the facts there could be no doubt. Spiritual intimidation was universal among the priesthood: from the bishop, who sent his pastoral through the two constituencies, wherein (so it was found) "the leading idea, that it was a matter of salvation that was in question, was developed with fidelity and distinctness, and governed the whole election":—from this bishop to the curate, whose language pictured the future punishment of the man who voted for a Parnellite in strong words, terrible to the believing Catholic.

"To some," says Mr. Justice Johnson in the North Meath case, "it may be a source of sour satisfaction; but to those to whom religion is dear, no matter where they worship, it must be a source of sorrow and pain" to find religion degraded in this way. Certainly no election was more deservedly avoided than were these. An Irish member, when Sir Henry James's bill was before the House, intreated that the judges in Ireland might have no jurisdiction in these election matters. "You in England," he said, "may be satisfied with your judges: we in Ireland have no confidence in ours" (Hans., vol. cclxxix. p. 1679). But there is no question of "satisfaction" or "confidence" here. The great mass of the constituency was to blame: and the Queen's judges were wanted in co. Meath to exert

the nation's power in securing that freedom of election which the nation had willed should be.

Corrupt practices of every sort and kind—alike that of the pulpit and the public-house—under the present law are doomed. Even where there is the inclination to be corrupt, the risk will now be too great. You may win a vote, two votes, three votes: but you will put all your votes in jeopardy. It is a wager that no reasonably prudent man will dare to lay. The right then, it would seem, must triumph now: the rich man can no longer buy it out. But the authors of Sir Henry James's Act clearly perceived that, to achieve this result, something more is needed than even the entire suppression of corrupt practices. For, even where all is honest and above-board, the rich candidate, if unrestrained by law, would still have great advantages. He could pay a higher price for the expenses of his election, for its organisation, and, in the present age most important of all, for its advertisement. A people, which notoriously will buy almost anything be it only advertised enough, will be led by advertisements in the disposal of its franchise, as well as in that of its money: it will do always what seems to be most popular: people will flock to the largest standard, or to that which is made of the most showy stuff. Or, at the least, when opinions are closely divided, these things will turn the scale. Besides advertisements, there are many things in which the rich man has the better of his poorer opponent: the attending to registers, the hiring of committee rooms, and (an old vexed question) the bringing of voters to the poll—all these things are expensive. If the true mind of the people is to be shown at the poll, the chances of the candidates must be equalised by some further machinery of the Legis-

lature. Hence those many sections of the Act which deal with illegal practices, making positive rules as to how much money may be spent, and on what objects, and by what persons. The mass of these regulations need no discussion; their meaning is clear; the only perplexing questions that have arisen in most of these matters have been questions of fact and proof. The principle is a plain and righteous one—to make electioneering as cheap as reasonably possible, so that all sides may have an equal opportunity, and may be judged on their merits alone.

There is one section, however, concerning illegal payment, which gave rise to considerable argument. By this section—sect. 16—“no payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.” On this section raged the hottest of the fight in the Walsall, East Clare, and Stepney petitions. And very nice distinctions arose upon it, the comparison of which is at first sight somewhat startling. At Walsall the sitting member was unseated because his election agent paid for hat cards with the said member’s portrait on them, together with words used for the purpose of stimulating the voters on his behalf, and no excuse was allowed. In East Clare the sitting member was a Parnellite: there the cards invited beholders to remember Parnell and to vote for the Parnellite candidate: these cards were not made for hat cards, but were used as such: these were held (even if paid for by the candidate) not to be “marks of distinction” and not to fall within the 16th section of the Act. At Stepney, streamers paid for by the candidate were hung across the street: these were held to

be “banners” and “marks of distinction” within the meaning of the section; but they were excepted from being illegal payments, an exception which the Court has power to make by sect. 23. This last named section gives the Court the second of its condoning powers, exercisable in its discretion; and greater clemency is thereby allowed in the case of merely illegal payments than can be extended to corrupt practices.

What is the object of the provision against payment for “marks of distinction?” It was suggested in the *Stepney* case that the object was to preclude those kinds of marks of distinction which might lead to a fight (a suggestion which finds some foundation in the judgment of Mr. Baron Pollock at Walsall). “But,” said Mr. Justice Cave in his *Stepney* judgment, “I do not think that that was the intention of the Act of 1883, because, if it had been, it seems to me that all colours, all badges, and all banners would have been made illegal, instead of only those which are paid for by the candidate or his election agent. That cannot make the slightest difference, with regard to their provocative effect, if that was the object of the Legislature. It seems to me that the object was entirely different. What was intended to be struck at was the waste of money at elections, which served no useful purpose at all. A maximum was fixed: this, that, and the other mode of spending money was made illegal. Why? Partly for the purpose of preventing waste of money, and, if it has any other object, it is that of preventing a man from gaining a false show of popularity by laying out his money on flags and banners and such like.” (b) And this probably

(b) Candidates must be careful about paying even for bills and placards, which it was suggested in the *Stepney* case may be held to be within the section. (Cf. 4 O’M. & H. 181.)

may be taken to represent the objects of all those clauses, speaking generally, which deal with illegal practices.

The case of Walsall must be acknowledged to be a hard one; and it is at first sight very difficult to see why the same relief should not have been given to the respondent there, which was subsequently given in the Stepney case. But it must be remembered that it is of the very essence of those condoning powers that the matter is to be absolutely in the discretion of the Court. Now at Walsall, in the first place, the Court held, as judges of fact, that the conduct of the election agent in buying the fatal hat cards did not arise from "inadvertence or other reasonable cause of a like nature." So they could not excuse it under sect. 23, which makes these circumstances indispensable; while condonation under sect. 22 was out of the question, because the election agent was himself in fault. In the second place, Sir Henry Hawkins said: "I would add that even if the word 'inadvertence' could be construed as we were asked to construe it, for myself I should hesitate long before applying relief, in the exercise of my discretion, to a case like the present."

Mr. Justice O'Brien in his East Clare judgment said: "The Walsall case is considered to have gone to the extreme verge of the law and of common sense"—which is the general opinion—and he therefore refused "to step across the border into the region of entire and utter absurdity." It comes to this: the question whether this or that thing is, for this purpose, a "mark of distinction" is a question of fact, which can only be decided in reference to the particular circumstances of each case.

A candidate should make himself personally acquainted with the clear directions of the statute as to what are

illegal payments. The election agent at any rate must be an expert in the matter. And, so far as possible, every other agent must (as Mr. Justice Vaughan Williams said) be "carefully selected and carefully supervised." It ought to be made almost impossible for any of them to commit a corrupt or illegal practice.

There is one class of agents with regard to which the candidate has to be particularly careful. These are political associations. In almost every constituency there are to be found Conservative or Liberal associations, which are employed at ordinary times in doing general work for their respective parties, but which at election times naturally incline to expend their energies to a large degree in each supporting its party's local representative. These associations are invaluable as allies; but, for obvious reasons, dangerous as agents. Now, as Mr. Justice Cave remarked at Hexham, "if their action is recognised by the candidate that would of course be quite sufficient to make the association his agents. When I say the 'association,' I do not mean every member of it; but I do mean that it was sufficient to make the acts of the executive committee acts for which the candidate would be responsible, as long as he chose to acquiesce in their endeavouring to support him and procure his election." Therefore, if the candidate would not have the association for his agents, of course, he must not make them *his* canvassers. Yet, as Mr. Baron Pollock said at Walsall, "there are many other acts which a political association are entitled to do, even to the extent of making known their views, which in one sense may amount to canvassing, while, at the same time, they do not pledge themselves to become agents, nor does the proposed member become liable for their acts as agents." The

conclusion is that the association may "canvass," if we so call it, for their party, may expound their party views, may publish reasons why Home Rule, or Church Disestablishment, or what not, is desirable or undesirable, and may persevere in so doing throughout election time. The candidate may acquiesce in all this, and may continue to pay his subscription—that was specifically decided in the Worcester case—and yet, if that is all, the association will not be his agents. But the association must not, with the acquiescence of the candidate, canvass for *him personally*; if they do so, of course they will be his agents. The question as to the exact point of time when an association passes from being merely the agents of a party to being the agents of a particular candidate was declared to be a question of some nicety in each case. The judges refused to lay down any positive rule on this subject, considering it to be a question of fact, depending in each case on surrounding circumstances.

It must be remembered that an election petition is something more than an issue between the petitioner and the respondent. The whole constituency is in a manner on its trial. The judges have to make a general report, and not merely to say whether the election was good or bad. For this reason there must be no collusive holding back of evidence. Charges once made are not easily withdrawn; nor, on the other hand, can inquiry be escaped by the frank avowal that the seat cannot be defended. That is what was unsuccessfully attempted in the North Meath case. The Court will search out everything it can, and endeavour to find out the real state of facts.

And, moreover, the Director of Public Prosecutions or his representative is there to help the Court in seeing that

no material evidence is kept out which might throw light on the case. This arrangement has its drawbacks: the fight inclines to become a sort of triangular duel between the petitioner, the respondent, and the Public Prosecutor, and this may prove hard on a respondent who is brought face to face with evidence which he was never, till the last moment, called upon to meet. But this matter again is in the discretion of the Court, in whose hands the Public Prosecutor is entirely placed. In some of the earliest petitions that were tried under this Act—the Stepney (4 O'M. & H. 37) and Buckrose (4 O'M. & H. 115) cases of 1886—it was ruled that the Public Prosecutor had no right to cross-examine witnesses during the trial. Mr. Justice Cave, at Rochester (4 O'M. & H. 158), has now gone further still, holding that the duties of the Public Prosecutor are confined to assisting the Court at the conclusion of the case, in considering whether any particular individual has been guilty of corrupt practices. But he concurred in a qualification of this, which Mr. Justice Vaughan Williams added, saying:—"Yet if there should be in his opinion any collusive withholding of evidence, it would be his duty to interfere and call that evidence himself." But, while the parties are at arms' length and beyond suspicion of collusion, the Public Prosecutor must not interfere between them. The question arose again at Montgomery, when it was decided that the issue between the petitioner and respondent must first be tried, and that the Public Prosecutor has no separate *locus standi*, but must wait until the Court invites his intervention (4 O'M. & H. 168, 169). At the conclusion of the respondent's case, the Court intimated its desire to call certain witnesses, who it hoped might throw further light on obscure parts of the case.

Respondent's counsel objected that the petitioner ought not to have an opportunity of benefiting his case by their evidence; but the Court said it had jurisdiction—so it had held at Hexham too (4 O'M. & H. 143)—and called the witnesses, who did not, however, as it happened, elucidate matters. This method is not without great disadvantages. How is the respondent to deal with charges which are brought against him in this form? and how is the Court to call evidence, affecting the general report, which shall not affect the seat as well? The Court must be very careful, as Mr. Justice Denman said in the Stepney case of 1886 (4 O'M. & H. 37), to do nothing which is “inconvenient or unfair to the respondent” in availing itself of its powers in this respect; and this has, in fact, been the tendency of all the decisions which have been given in the recent cases on the point.

The conclusion of the whole matter is, that the really innocent and careful candidate runs some risk indeed, but a very slight one, of losing his seat for things which he could not have helped; but it must be observed that he does run a very great risk—indeed, in some cases it is a certainty—of losing thousands and thousands of pounds in the expenses of his defence. The petitioner's game is to make the petition as wide, and the particulars as voluminous as possible; and the defence of each and all of these, the rotten as well as the substantial charges, is an extremely costly matter. Look at the case of the Montgomery boroughs. There sixty-nine charges were made, the bulk of which were worthless, but which all had to be answered at the cost of immense labour and expense. Look at the flagrant cases of this abuse at Worcester and at Pontefract. The former of these is described in the judgment as “in-

flicting intolerable hardship," and in the latter the charges made were adjudged to be "scandalously reckless." It is true, as Mr. Justice Cave said in the East Manchester petition (which was, perhaps, the worst of them all in this respect), that the petitioner will suffer the penalty for such conduct in the costs which he has to pay, by way of caution "that those who draw particulars are not at liberty to throw charges about broadcast, but must confine themselves to those charges which they expect to have some means of establishing." But what consolation is this to the respondent in cases where the petitioners are men of straw? Now, any voter or person who had a right to vote may be a petitioner. The Parliamentary Elections Act, 1868 (31 & 32 Viet. c. 125), s. 5, still regulates the question of who may be petitioners; and Sir Henry James's Act does not touch the matter. In theory it may be well that any voter, however poor, should have the right to petition if his franchise has been deprived of its due effect by reason of the wrong-doing of the candidate and his agents at the election—though it must be noted that he will have to deposit 1,000*l.*, and to pay the expenses of the attack. But then this poor voter should be *bonâ fide* the petitioner, not a mere dummy, under cover of whose poverty the real and substantial attackers shelter themselves. It is notorious that rich men and rich associations have been behind the nominal petitioners in several of the cases. These find the 1,000*l.* that must be deposited; this, indeed—a mere fraction of the cost of answering such charges—the successful respondent may recover, for the rest he has a judgment against a man of straw. Should there not be some means of reaching the real maintainer of the suit? Perhaps an action at common law for main-

tenance may be suggested as the remedy. But, in the first place, it is at least doubtful whether paying the expenses of an election petition would be held to be an "officious intermeddling" in the suit of another, such as would support an action for maintenance, and whether a plea of common interest with the nominal petitioners would not be successful on defendant's part. In the second place, it is impossible to obtain "discovery," which would be essential to the success of such a suit, because maintenance is a crime, and every one who knew anything of the maintenance would be protected from giving evidence. The second reason might be obviated by abolishing the obsolete indictment (c) for maintenance, which is quite unnecessary and only operates in the way above suggested in making the civil action difficult. But something more is needed. There should surely be some statutory remedy to prevent rich men and rich associations from maintaining an election petition, using the medium of men of straw, and afterwards, when the petition is dismissed, refusing to pay anything above 1,000*l.* to the respondent, though he has lost a much larger sum in justifying himself against their unwarranted attack. The respondent can have no men of straw to fight his battle for him. If he is defeated, he pays the petitioner's costs and loses his seat as well. It is therefore a crying injustice that, when he wins the contest, he should have to pay such a high price for his victory. This is the one serious wrong remaining in English election law. If it be not removed it will weigh heavily against the excellent work which Sir Henry James's Act has done

(c) The witness is only protected if the disclosure would subject him to "crimination, penalty, or forfeiture." (See Best on Evidence, p. 218.)

in behalf of the right; and an election petition, which is intended to further purity in the exercise of the franchise, and to deprive money of its power to override the real mind of the people, will become, on the contrary, a mere instrument of party machinery, by which rich men and rich associations may wear out the strength of candidates who are too poor to fight in such an unequal struggle.

CORRUPT AND ILLEGAL PRACTICES
PREVENTION ACT, 1883.

(46 & 47 VICT. c. 51.)

*An Act for the better prevention of Corrupt and Illegal
Practices at Parliamentary Elections.*

[25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Corrupt Practices.

1. Whereas under section four of the Corrupt Practices Prevention Act, 1854, persons other than candidates (*a*) at Parliamentary elections are not liable to any punishment for treating, and it is expedient to make such persons liable; be it therefore enacted in substitution for the said section four as follows :—

(1.) Any person who corruptly by himself or by any other person (*b*), either before, during, or

(*a*) "Other than candidates." See Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 4., for which repealed section the present section is substituted.

(*b*) "Or by any other person." See "Note on the Parliamentary Law as to AGENCY," at p. 151. It was decided under the Corrupt Practices Prevention Act, 1854 (17 & 18

after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat drink entertainment or provision to or for any person, for the purpose of corruptly influencing (c) that per-

Vict. c. 102), that "the respondent by himself and other persons in his behalf," covers the acts of every person, besides the respondent, for whose act he is responsible, *i. e.*, every agent; and it is enough to allege *in an election petition* an offence "by the respondent and other persons on his behalf." Otherwise in a criminal case or an action for penalty. The law of agency, which would vitiate an election, is utterly different from that which would subject a candidate to an indictment or penalty; and the question of his right to sit in Parliament has to be settled on an entirely different principle. (*Norwich case*, 1869, 1 O'M. & H. 10.)

What that principle is has been explained in the note above referred to. It may be worth observing, that the words "in his behalf" do not occur in this section, though they do occur in sect. 2 of this Act. "Person" includes "association." See sect. 64.

(c) To constitute an offence under this section the act must be done corruptly, or with a corrupt purpose. Treating may be innocent. *Prima facie* it is innocent. But it may be given under such circumstances as to lead the tribunal to conclude that it was not innocent, but corrupt. Where a school-feast had been given by the respondent for many years, and no more was done than had been done in previous years, there was no corrupt treating in his giving one a few months before the election was expected, although a very much larger number of persons came on the occasion in question than ever came before, and although the respondent did anticipate that he would be a candidate at such election. (*Aylesbury case*, 4 O'M. & H. 63.)

The statute does not apply to that form of treating, which exists occasionally between social equals, where first one treats and then the other—one form of hospitality. Neither does it apply to certain kinds of treating which exist in relation to business matters—cementing a bargain with a little drink. It applies to that sort of treating, which exists where the superior treats his inferior, which gives the treator influence over the treatee, and secures his goodwill. Not however to all cases of this kind does the "corrupt treating" here spoken of apply. It does not apply to a return for

son or any other person to give or refrain from giving his vote at the election, or on account of

small services, *e.g.*, to a porter, or a guard, or the treaters' own servants: nor where the object is to acquire general goodwill. It must have reference to some election, and be for the purpose of influencing some vote. (Per Cave, J., *Norwich case*, 1886, 4 O'M. & H. 91.)

Where refreshments are a mere incident of a political gathering, there is no offence within the Act. It does not make it "corrupt treating" if the persons attending the meeting are provided with some sort of refreshment. But if they are gathered together merely to gratify their appetites, and so to influence their votes, then it is "corrupt treating" within the Act. (*Rochester case*, 4 O'M. & H. 157.) In that case a threepenny ticket entitled the holder to partake of ale, claret and sandwiches.

So, in the *Hexham case* (4 O'M. & H. 150), Vaughan Williams, J., speaks of the practice of political associations giving entertainments, picnics, suppers, teas, sports, &c., as "a practice dangerously akin to 'corrupt treating,' and one which if indulged in by a candidate would certainly amount to 'corrupt treating.'"

But the *Hexham* judgment is not an intimation that any one of the transactions therein referred to would have been, taken alone, as amounting to treating. It is always a question of intention, and the Court looks to the whole of the circumstances in each case. (*Rochester case*, 4 O'M. & H. 156.)

Where evidence was given of a "promise to treat" by an agent of the respondent, it was submitted that this required no answer, there being no such offence as a "promise to treat." But the Court said:—"We think this case must be met." (*Montgomery Boroughs case*, 4 O'M. & H. 169.)

Note that, apart from the statutory avoidance of a seat for treating by agents, there may be such general treating as will vitiate the election at common law. If it could be proved there was treating in all directions on purpose to influence voters, that public-houses were thrown open where people could get drink without paying for it, by the common law such election would be void, because it would be carried on contrary to the principle of the law. (*Bradford case*, 1 O'M. & H. 41; *Beverley case*, *id.* 149.)

Only to avoid the seat for corruption at common law the corruption must, of course, have been in favour of the person

such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

(2.) And every elector who corruptly accepts or takes any such meat drink entertainment or provision shall also be guilty of treating.

What is
undue in-
fluence.

2. Every person who shall (*d*) directly or indirectly, by himself or by any other person on his behalf (*e*), make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any

who was elected. The Court, in each of these cases, will look to the particular circumstances to see whether the result might have been affected by the corruption proved. The absolute majority obtained is an important ingredient in deciding this. The corruption of ten or twelve might be very important where there is a majority of twelve—certainly not so important where there is a majority of sixty or more. (*Ipswich case*, 4 O'M. & H. 71.) See last part of note to sect. 2.

(*d*) This section replaces sect. 5 of the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), which is repealed.

(*e*) "Or any other person on his behalf." It was decided that the same words under the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), cover the acts of every person other than the candidate for whose act *he* is responsible, *i. e.* every agent: and it is enough in an election petition to allege an offence "by the respondent and other persons in his behalf." Otherwise in a criminal case, or an action for penalty. The law of agency which would vitiate an election, is utterly different from that which would subject a candidate to an indictment or penalty; and the question of his right to sit in Parliament has to be settled on an entirely different principle. (*Norwich case*, 1869, 1 O'M. & H. 10.)

This principle is explained in the "Note on the Parliamentary Law as to AGENCY," at p. 151.

temporal or spiritual (*f*) injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election (*g*), or who shall by abduction, duress, or any fraudulent device (*h*) or

(*f*) "Spiritual." It is the undoubted right of the clergy to canvass and induce persons to vote in a particular way; but it is not lawful to declare it to be a sin to vote in a different manner, nor to threaten to refuse the sacraments for so doing. (See *South Meath case*, 4 O'M. & H. 131; *North Meath case*, 4 O'M. & H. 187, decided under this Act; and cf. the earlier cases of *Galway*, 1 O'M. & H. 303; *Longford*, 2 O'M. & H. 7; and *Mayo*, 1 W. & D. 1.)

It is doubtful whether the holding out of spiritual hope to influence a vote would be "undue influence" within this Act. (See *South Meath case*, *ubi sup.*)

(*g*) To avoid the seat for intimidation under this section, it is necessary to prove that the candidate or his election agent was guilty of, or sanctioned it. But note that besides statutory intimidation there is a common law intimidation which may also vitiate the election—where the intimidation is so general and extensive in its operation that it cannot be said that the polling was a fair representation of the opinion of the constituency. If the intimidation is local or partial, the election will not be set aside for it. But where it is general, the onus lies on the constituency incriminated to show that the gross amount of intimidation could not possibly have affected the result. The Court looks not only to the amount of the intimidation, but to the absolute majority which has been obtained. (*North Durham case*, 2 O'M. & H. 157; cf. *Stafford case*, 1 O'M. & H. 229; and *Thornbury case*, 4 O'M. & H. 67.)

For the principle, see also the *Ipswich case* (4 O'M. & H. 71), and the last part of the note to sect. 1 of this Act.

Where such intimidation was considerable, though not enough to affect the result, the respondent will not get his costs. (*Thornbury case*, *ubi sup.*)

(*h*) "Fraudulent device." The section deals with two classes of misconduct:—(1) the first class depends on intent: using or threatening to use force, &c., or inflicting or threatening to inflict injury, &c. in order (*i. e.*, with the intent) to

contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

What is
corrupt
practice.

3. The expression "corrupt practice" (*i*) as used in this Act means any of the following offences; namely, treating (*k*) and undue influence (*l*), as defined by this Act, and bribery (*m*), and personation (*n*), as defined by the enactments set forth in

induce a voter, &c.; (2) for the second class there must be successful impeding or preventing the free exercise of the franchise by abduction, &c. Thus, in the *Stepney case*, 1886, (4 O'M. & H. 57), a fraudulent device, which falls under the second head, was held not to vitiate an election in the absence of evidence that any one was in fact deceived thereby.

(*i*) "Corrupt practice" is not a sufficient description of an offence in an indictment. (See *Reg. v. Stroulger*, 17 Q. B. D. 327.) In that case, the prisoner was tried and convicted on an indictment alleging that at the parliamentary election for Ipswich he was guilty of "corrupt practices" against the form, &c. It was held by the majority of the Court that the indictment was defective, because it did not state specifically of what corrupt practices the prisoner was guilty, but that the defect was cured by verdict.

(*k*) "Treating"—defined by sect. 1 of this Act.

(*l*) "Undue influence"—defined by sect. 2 of this Act.

(*m*) "Bribery"—defined by the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), ss. 2, 3, and by certain sections of other Acts, making corrupt payment of rates and university registration fees "bribery." (See notes under these sections as set out in the Third Schedule to this Act.)

(*n*) "Personation"—defined by the Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24. (See the section set out in the Third Schedule of this Act, and notes thereto.) It seems that an election cannot be avoided by personation other than that by an agent of the candidate. For it cannot be avoided at common law by general personation, as it may by general bribery or undue influence; while to avoid the seat under

Part III. of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation, and every offence which is a corrupt practice within the meaning of this Act shall be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

4. Where upon the trial of an election petition respecting an election for a county or borough the election court (*o*), by the report made to the Speaker in pursuance of section eleven of the Parliamentary Elections Act, 1868, reports that any corrupt practice other than treating or undue influence has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election (*p*), or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever being elected to or sitting in the House of Commons for the said county or borough, and if he has been elected, his election shall be void; and he shall further be subject to the same incapacities (*q*) as if at the date of the said report he had been convicted on an indictment of a corrupt practice.

31 & 32
Vict.
c. 125.

Punish-
ment of
candidate
found, on
election
petition,
guilty
personally
of corrupt
practices.
31 & 32
Vict.
c. 125.

the statute, agency must be proved. (*West Belfast case*, 4 O'M. & H. 108. See sect. 5.)

For the kind of agency which must be proved, see note on the Parliamentary Law of AGENCY at p. 151.

(*o*) "Election Court"—defined by sect. 64.

(*p*) "Candidate at an election"—defined by sect. 63.

(*q*) "Incapacities." See sect. 6, sub-s. (3).

Punish-
ment of
candidate
found, on
election
petition,
guilty by
agents of
corrupt
practices.

5. Upon the trial of an election petition respecting an election for a county or borough, in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the Speaker whether any of the candidates at such election has been guilty by his agents (*r*) of any corrupt practice in reference to such election; and if the report is that any candidate at such election has been guilty by his agents of any corrupt practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for such county or borough for seven years after the date of the report, and if he has been elected his election shall be void.

Punish-
ment of
person
convicted
on indict-
ment of
corrupt
practices.

6. (1.) A person who commits any corrupt practice (*s*) other than personation, or aiding, abetting, counselling, or procuring the commission of the offence of personation, shall be guilty of a misdemeanor (*t*),

(*r*) "By his agents." See note on the Parliamentary Law of AGENCY at p. 151.

(*s*) "Corrupt practice" is not a sufficient description of an offence in an indictment. (See *Reg. v. Stroulger*, 17 Q. B. D. 327.) In that case the prisoner was tried and convicted on an indictment alleging that at the Parliamentary election for Ipswich he was guilty of "corrupt practices," against the form of the statute, &c. It was held by the majority of the Court that the indictment was defective, because it did not state specifically of what corrupt practices the prisoner was guilty, but that the defect was cured by verdict.

(*t*) Objection was made in the *Montgomery Boroughs case* (4 O.M. & II. 167) that witnesses should not be ordered out of Court during the trial of an election petition where criminal charges were made against some of the respondent's witnesses, and it was argued that it would be only fair that they should remain in Court to instruct their representatives. The Court

and on conviction on indictment shall be liable to be imprisoned, with or without hard labour, for a term not exceeding one year, or to be fined any sum not exceeding two hundred pounds.

(2.) A person who commits the offence of personation, or of aiding, abetting, counselling, or procuring the commission of that offence, shall be guilty of felony, and any person convicted thereof on indictment shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

(3.) A person who is convicted on indictment of any corrupt practice shall (in addition to any punishment as above provided) be not capable during a period of seven years from the date of his conviction:

(a) of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office within the meaning of this Act; or

(b) of holding any public (*u*) or judicial office (*x*) within the meaning of this Act, and if he holds any such office the office shall be vacated.

(4.) Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Com-

overruled the objection, and witnesses on both sides were ordered out of Court until called. But the election agent may remain in Court. (See *Knaresborough case*, 3 O'M. & H. 142.)

(*u*) "Public office"—defined by sect. 64 of this Act.

(*x*) "Judicial office"—defined by sect. 64 of this Act.

mons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction.

Illegal Practices.

Certain
expendi-
ture to be
illegal
practice.

7. (1.) No payment or contract for payment shall for the purpose of promoting or procuring the election of a candidate at any election (*y*) be made—

(a) on account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

(b) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(c) on account of any committee room in excess of the number allowed by the First Schedule to this Act.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice (*z*), and any person re-

(*y*) "Candidate at any election." See sect. 63.

(*z*) Where it was objected that the petition said that during the election the respondent was by his agents guilty of illegal practices by hiring, for the purpose of the conveyance of electors to and from the poll at the said election, carriages

ceiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit (a) for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

8. (1.) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election (b) or his election agent, whether before, during, or after an election, on account of or in respect of the conduct or management of such elec- Expense in excess of maximum to be illegal practice.

and horses, knowing that the owners thereof were prohibited by sect. 14 of this Act from lending the same for that purpose—there being no allegation in the particulars that the acts complained of had been done by the candidate or his election agent—the Court held that this was a good objection, and refused to amend the petition so that this section (sect. 7) might apply, in which it is an illegal practice if *any* agent was guilty of hiring horses or vehicles. (*East Manchester case*, 4 O.M. & H. 120.)

(a) Field, J., says, in the *Barrow-in-Furness case* (4 O.M. & H. 78), that if it is lawful to pay an advertising agent to exhibit a bill, it must be lawful to take the bill to be exhibited; it cannot be exhibited until it is printed, and it must be posted up; and the labour of doing all that involves an expense which must be incurred by the candidate. So that inferences from this section and sect. 18 would seem to help to extend sect. 17 and the schedule thereto attached.

(b) “A candidate at an election”—defined by sect. 63. But where a man begins to incur expenses with regard to an election before the dissolution or issue of the writ, those expenses must be returned. (*Rochester case*, 4 O.M. & H. 157.)

tion (c), in excess of any maximum amount in that behalf specified in the first schedule to this Act.

(2.) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice.

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

9. (1.) If any person votes or induces or procures any person to vote at any election, knowing that he or such person is prohibited, whether by this (d) or any other Act (e) from voting at such election, he shall be guilty of an illegal practice (f).

(c) "On account of or in respect of the conduct or management of such election."—Expenses connected with improving the registration of the borough in the interest of the candidate and his party are not within this section; nor is the starting of a newspaper advocating the candidate's political views. What is or is not such expense is a question of fact for the Court as a jury to decide. (*Kennington case*, 4 O'M. & H. 93.)

(d) "This Act." See First Schedule, Pt. I. (7).

(e) "Any other Act." (Cf. the Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 7.) No person under the age of one-and-twenty years may vote, by 7 & 8 Will. 3, c. 25, s. 8. Nor may any elector vote who has been employed for reward within six months of the election by any candidate at such election as agent, canvasser, clerk, messenger, or in other like employment by sect. 11 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102). As to this last case, cf. sect. 17 of this Act, and the First Schedule, Pt. I. (7). Common-law disabilities are not touched by this section.

(f) Where M. voluntarily undertook the duties of a sub-agent without any payment or reward, or promise of payment or reward, and when he voted he believed he would receive none, but after the election was over, the election agent, finding that he had a surplus, paid him a sum of 26*l.* as an honorarium, and five guineas for the use of his office, and M. did not tell him he had voted, this was held to be an illegal practice under sect. 9, and the Court refused to make an order under sect. 23 relieving M. of the consequences of his act. (*S. W. Essex case*, 2 T. L. R. 388.)

(2.) Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed by his agent other than his election agent.

10. A person guilty of an illegal practice, whether under the foregoing sections or under the provisions hereinafter contained in this Act, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the county or borough in which the illegal practice has been committed.

Punishment on conviction of illegal practice.

11. Whereas by sub-section fourteen of section eleven of the Parliamentary Elections Act, 1868, it is provided that where a charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall report in writing to the Speaker as follows :—

Report of election Court respecting illegal practice, and punishment of candidate found guilty by such report.

- (a) “ Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any
- 31 & 32 Vict. c. 125.

- “ candidate at such election (*g*), and the nature
 “ of such corrupt practice ;
 (b) “ The names of all persons, if any, who have
 “ been proved at the trial to have been guilty
 “ of any corrupt practice ;
 (c) “ Whether corrupt practices have, or whether
 “ there is reason to believe corrupt practices
 “ have, extensively prevailed at the election
 “ to which the petition relates ” :

And whereas it is expedient to extend the said sub-section to illegal practices :

Be it therefore enacted as follows :—

31 & 32
 Vict.
 c. 125.

Sub-section fourteen of section eleven of the Parliamentary Elections Act, 1868, shall apply as if that sub-section were herein re-enacted with the substitution of illegal practice within the meaning of this Act for corrupt practice ; and upon the trial of an election petition respecting an election for a county or borough, the election court shall report in writing to the Speaker the particulars required by the said sub-section as herein re-enacted, and shall also report whether any candidate at such election has been guilty by his agents of any illegal practice within the meaning of this Act in reference to such election, and the following consequences shall ensue upon the report by the election court to the Speaker ; (that is to say,)

- (a) If the report is that any illegal practice has been proved to have been committed in reference to such election by or with the knowledge and

(*g*) “ Candidate at such election.” See sect. 63.

consent of any candidate at such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for the said county or borough for seven years next after the date of the report, and if he has been elected his election shall be void ; and he shall further be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice ; and

- (b) If the report is that a candidate at such election has been guilty by his agents (*h*) of any illegal practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for the said county or borough during the Parliament for which the election was held, and if he has been elected, his election shall be void (*i*).

12. Whereas by the Election Commissioners Act, 1852, as amended by the Parliamentary Elections Act, 1868, it is enacted that where a joint address of both Houses of Parliament represents to Her Majesty that an election court has reported to the Speaker that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed at an election in any county or borough, and prays Her Majesty to cause inquiry under that Act to be made by persons named in such address (being qualified as therein mentioned), it shall be lawful for

Extension
of 15 & 16
Vict. c. 57,
respecting
election
commis-
sioners to
illegal
practices
15 & 16
Vict. c. 57,
31 & 32
Vict.
c. 125.

(*h*) See "Note on the Parliamentary Law as to AGENCY," at p. 151.

(*i*) *I. e.*, unless such illegal practice is exonerated under sect. 22 or sect. 23.

Her Majesty to appoint the said persons to be election commissioners for the purpose of making inquiry into the existence of such corrupt practices:

And whereas it is expedient to extend the said enactments to the case of illegal practices:

Be it therefore enacted as follows:—

15 & 16
Vict. c. 57.

When election commissioners have been appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same, they may make inquiries and act and report as if “corrupt practices” in the said Act and the enactments amending the same included illegal practices; and the Election Commissioners Act, 1852, shall be construed with such modifications as are necessary for giving effect to this section, and the expression “corrupt practice” in that Act shall have the same meaning as in this Act.

Illegal Payment, Employment, and Hiring.

Providing
of money
for illegal
practice or
payment
to be
illegal
payment.

13. Where a person knowingly provides money for any payment (*k*) which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment or expenses, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

Employ-
ment of
hackney

14. (1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or

(*k*) “Payment”—defined by sect. 64.

from the poll, any public stage or hackney carriage, ^{carriages,} or any horse or other animal kept or used for drawing ^{or of} the same, or any carriage, horse, or other animal ^{carriages} which he keeps or uses for the purpose of letting out ^{and horses} for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of an illegal hiring. ^{kept for hire.}

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows *(l)* the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal hiring *(m)*.

(l) Where the voter had driven to the poll in a cab, paying nothing to the driver, but there was no proof that the voter knew that the use of the cab was prohibited by law, the Court allowed the vote, and held that no breach of this section had been committed. (*Buckrose case*, 4 O'M. & H. 117.)

(m) An "illegal hiring" is not an "illegal practice" unless committed (see sect. 21 (2)) by the candidate, or his election agent. Therefore, where it was objected that the petitioner said that during the election the respondent was, by his agents, guilty of illegal practices by hiring, for the purpose of the conveyance of electors to and from the poll at the said election, carriages and horses, knowing that the owners thereof were prohibited by this section from lending the same for that purpose—there being no allegation in the particulars that the acts complained of had been done by the candidate or his election agent—the Court held that this was a good objection, and refused to amend the petition so that sect. 7 might apply, which makes it an illegal practice if any agent is guilty of hiring horses or vehicles. (*East Manchester case*, 4 O'M. & H. 120.)

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of being conveyed to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a license for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

Corrupt
with-
drawal
from a
candida-
ture.

15. Any person who corruptly induces or procures any other person to withdraw from being a candidate at an election (*n*), in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing, in pursuance of such inducement or procurement, shall also be guilty of illegal payment.

Certain
expendi-
ture to be
illegal
payment.

16. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election (*o*), be made on account (*p*) of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction (*q*).

(*n*) "A candidate at an election"—defined by sect. 63.

(*o*) See sect. 63.

(*p*) "On account of." Where a man was employed to repair a portion of the roof of a house, which had been damaged by reason of ropes having been attached to it for the purpose of suspending a banner across the street (the banner itself being lawful), this was held not to be an illegal payment. (*Stepney case*, 1886, 4 O'M. & H. 39.)

(*q*) Where broad strips of canvas, with the words "Isaacson for Stepney" on them, had been paid for by the election agent and hung across the streets, these were held to be

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract

“banners” and “marks of distinction” within the section. Cave, J., did not think it was the object of the Act to preclude those kinds of marks of distinction which might lead to a fight. Its object was partly to prevent waste of money, and partly to prevent a man gaining a false show of popularity by laying out his money on flags, banners and such like. The payment for these banners was, however, excused as “inadvertent” under sect. 23. (*Stepney case*, 1892, 4 O.M. & H. 179—183.)

In the *Walsall case* (4 O.M. & H. 126), 2,000 cards, bearing respondent's portrait and the words, “We're bound to win—Play up Swifts—Vote for James,” and 2,000 similar impressions on stout paper were printed by the printer, who was employed by the respondent, in respondent's colours. They were, in fact, largely worn in the hats of respondent's supporters. They were charged to the election account, and were paid for by the election agent. The Court held the election void, on the ground that the use of the hat-cards was an illegal practice, and refused to give relief under sect. 23.

Where yellow cards had been extensively worn, and where one witness proved that an agent of respondent pinned such cards on to him at respondent's committee-room, the Court did not agree with regard to the inferences to be drawn from the facts as to whether these were marks of distinction or not. (*Pontefract case*, 4 O.M. & H. 200.) In that case Hawkins, J., said:—“The cards in use at Walsall were obviously marks of distinction, and I came also to the conclusion that they were simply cockades in another form. They were purposely made to be worn in the hat, ordered for that purpose, and paid for with the knowledge of the use to which they were put. It was an illegal payment, whether they are called ‘cockades,’ or only ‘marks of distinction.’”

In the *East Clare case* (4 O.M. & H. 162), 3,000 cards bearing the inscription, “Men of Clare, remember Parnell—vote for Redmond,” had been printed for the Young Ireland Society, who had distributed them in the interest of the respondent. These cards had, in fact, been largely worn in the hats of respondent's supporters: but had not been made or intended for hat-cards. The Irish judges held that these were not “marks of distinction” within the section.

It will thus be seen that the cases run very fine on this matter of “marks of distinction,” and great care must be

for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

Certain
employ-
ment to be
illegal.

17. (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at any election (*r*), be engaged or employed for payment (*s*) or promise of payment for any purpose or in any capacity whatever, except for any purposes or capacities mentioned in the first or second parts of the First Schedule to this Act, or except so far as payment is authorised by the first or second parts of the First Schedule to this Act (*t*).

exercised by those responsible for the conduct of an election, that nothing is paid for by the candidate, or his election agent, which could possibly fall within the categories of any of the things mentioned in this section. It would seem from *dicta* of the judges in the *Stepney* case, 1892, above cited, that it may be unsafe for a candidate at an election to pay even for bills and placards bearing his name and colours, in cases where they are not "addresses" or "notices" (as to which, see Schedule I., Part II. (3)). For such bills and placards might well be held to be "marks of distinction" within the principle in that case laid down.

(*r*) See sect. 63.

(*s*) "For payment"—see sect. 64. Refreshments may be "payment" within the meaning of this section. Thus, where a sandwich, a pork pie and a cup of coffee were given to respondent's "workers" on the polling-day, it was held that this was "illegal employment;" and where the respondent and his election agent are the offenders "illegal employment" is "illegal practice" (see sect. 21 (2)), and avoids the seat. (*Barrow-in-Furness* case, 4 O'M. & H. 82.)

(*t*) Canvassing handbills are not specifically mentioned in

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed contrary to law.

18. Every bill, placard, or poster having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is the candidate, or the election agent of the candidate, be guilty of an illegal practice, and if he is not the

Name and
address of
printer on
placards.

either part of the First Schedule. It is doubtful whether they are "addresses" or "notices" within the meaning of Part II. Sect. 3, of the First Schedule. But looking at other parts of the Act, as sect. 18, Field, J., held that it is not an illegal practice or expense to employ persons to distribute such handbills. (*Dissentiente Denman, J., Stepney case, 1886, 4 O'M. & H. 55.*)

Where it was proved that persons had been employed and paid for the distribution of documents relating to the respondent's candidature, *e. g.* a letter from a distinguished statesman giving reasons why he could not come to a meeting, the Court held that there was no "illegal employment" or payment under this section; but that such things come fairly within the meaning of "addresses and notices" mentioned in Part II. sect. 3, of the First Schedule. Offensive pictures and statements might be otherwise. But the Court has, in general, nothing to do with the contents of the documents. (*Barrow-in-Furness case, 4 O'M. & H. 78.*)

candidate, or the election agent of a candidate, shall be liable on summary conviction (*u*) to a fine not exceeding one hundred pounds.

Saving for
creditors.

19. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense in excess of a certain maximum, shall not affect the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

Use of
committee
room in
house for
sale of in-
toxicating
liquor or
refresh-
ment, or
in elemen-
tary
school to
be illegal
hiring.

20. (a) Any premises on which the sale by wholesale or retail of any intoxicating liquor is authorized by a licence (whether the licence be for consumption on or off the premises), or

(b) Any premises where any intoxicating liquor is sold, or is supplied to members of a club, society, or association other than a permanent political club, or

(c) Any premises whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises, or

(d) The premises of any public elementary school (*x*) in receipt of an annual parliamentary

(*u*) "Summary conviction." See sect. 54.

(*x*) "The premises of an elementary school." This, in general, includes a schoolmaster's house, where such house is within the curtilage of the school: though it might be otherwise where such house is obviously apart from, and distinct (not only with respect to structure, but with respect to the mode in which the expenditure of keeping it up is defrayed) from the school-house itself. (See sect. 6 of 35 & 36 Vict. c. 33.) But where the master's house was provided rent free by a subscriber to the schools, the house was held not to be part of the premises of a public elementary school, although the managers were in receipt of an annual parliamentary grant. (*Buckrose case*, 4 O'M. & H. 115.)

grant, or any part of such premises, shall not be used as a committee room (*y*) for the purpose of promoting or procuring the election of a candidate at an election, and if any person (*z*) hires or uses any such premises or any part thereof for a committee room he shall be guilty of illegal hiring, and the person letting such premises or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring:

Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

21. (1.) A person guilty of an offence of illegal payment, employment or hiring shall, on summary conviction (*a*), be liable to a fine not exceeding one hundred pounds.

Punishment of illegal payment, employment or hiring.

(2.) A candidate or an election agent of a candidate (*b*) who is personally guilty of an offence of

(*y*) "Committee-room." See sect. 64.

(*z*) "Any person." Wherever *de facto* certain persons meet together, who act as a committee during the polling-day, and in a room, whether it be a room within (*a*), (*b*), (*c*) or (*d*) of this section, in respect of which there is a prohibition: in all of these cases, at any rate, the members of the committee who so use that room must be taken to be within the provision. (*Buckrose case, ubi supra.*)

(*a*) "Summary conviction." See sect. 54.

(*b*) Where it was objected that the petition said that during the election the respondent was, "by his agents," guilty of

illegal payment, employment, or hiring, shall be guilty of an illegal practice.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

Report
exonerat-
ing candi-
date in
certain
cases of
corrupt
and illegal
practice
by agents.

22. Where, upon the trial of an election petition respecting an election for a county or borough, the election court report that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court—

- (a) That no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent; and
- (b) That such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and

illegal practice by hiring, for the purpose of the conveyance of electors to and from the poll at the said election, carriages and horses, “knowing that the owners thereof were prohibited, by sect. 14, from lending the same for that purpose”—there being no allegation in the particulars that the acts complained of had been done by the candidate or his election agent—the Court held that this was a good objection, and refused to amend the petition so that sect. 7 might apply, which makes it an illegal practice if *any* agent was guilty of hiring horses or carriages. (*East Manchester case*, 4 O’M. & H. 120.)

(c) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(d) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act (c).

23. Where, on application made, it is shown to the High Court or to an election court by such evidence as seems to the Court sufficient—

(a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being a payment, engagement, employment or contract in contravention of this Act, or being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Act, or of otherwise being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

Power of High Court and election court to except innocent act from being illegal practice, &c.

(c) The law intends, by this and the next section, to enable judges to relieve candidates from all responsibility for corrupt and illegal practices, where they satisfy the judges that they have done everything on their part to render the election pure and free from corruption. But the onus lies on the candidate and his election agent to prove, if they ask for such relief, that they personally took all reasonable means for preventing the commission of corrupt and illegal practices. (*Rochester case*, 4 O'M. & H. 160.)

- (b) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature (*d*),
-

(*d*) "Inadvertence"—"accidental miscalculation"—"some other reasonable cause of a like nature."—Thus, in the *Stepney case*, 1886 (4 O'M. & H. 52), where Denman, J., held that a candidate was guilty of illegal employment and illegal payment, in employing and paying persons to tout for votes and to distribute canvassing handbills, he excused him under this section, because the Act was new and by no means easy to master, and the blot in question was so far from obvious that opposed counsel did not rely on it until the Court pointed out its bearing. But he might hold otherwise, he said, on a future occasion with precisely similar facts.

Again, in the *Norwich case* (4 O'M. & H. 91), where an insufficient description of clerks and messengers was excused as "inadvertent," Cave, J., rested his decision on the ground that that part of the Act had never yet been interpreted. It does not therefore follow that the same excuse would be allowed now.

"Inadvertence" may either be that the party was not aware of what was done, or that he did not know it was wrong. Where streamers hung across the street were held to be "banners" within sect. 16, the Court said that the election agent might fairly say that the payments for them were "inadvertent" in the latter sense, and the payment was therefore excused under this section. (*Stepney case*, 1892, 4 O'M. & H. 182.)

But where cards for hats were charged as such to the "election account," and were paid for by the election agent, where they had been spoken of from the beginning as "cards for hats," and had been made specially adaptable for being placed in hats, though no want of good faith was imputed to either the respondent or the election agent, the Court refused to excuse this from being an illegal practice. There was no inadvertence, accidental miscalculation, or other ground of a like nature within the meaning of this section. A misconception of the law, it was said here, cannot be treated as inadvertence. (*Walsall case*, 4 O'M. & H. 129.) Note, that the Court has entire discretion in this matter; and Hawkins, J., said in the *Walsall case* that he would not exercise his discretion in favour of the respondent, even if he had the power. (Cf. *S. W. Essex case*, 2 T. L. R. 388.)

and in any case did not arise from any want of good faith (*e*) ; and

(*c*) that such notice (*f*) of the application has been given in the county or borough for which the election was held as to the Court seems fit ;

and under the circumstances it seems to the Court to be just that the candidate and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order (*g*) allowing such act or omission to be an ex-

(*e*) With regard to the question as to whether illegal payments have been made *bonâ fide*, it is very material to consider what was the character of the election in other respects—whether it was in other respects pure, so as to show that there has been a *bonâ fide* desire to avoid illegal practices. (*Stepney case*, 1892, 4 O.M. & H. 182.)

In *Ex parte Ayrton* (2 T. L. R. 214), an order under sect. 23 was granted to the applicant where the items of excess were for posting bills to deny untrue reports about the candidate.

(*f*) In the *Norwich case* (4 O.M. & H. 90), notice given in Court, where the persons interested were present, was held enough to satisfy the statute.

(*g*) The effect of such order is to do away with the illegal practice so relieved against, so that when the Court comes to make its report to the Speaker (see sect. 11), if that practice is all that has been proved against the respondent, the Court will have to report that there has been no illegal practice. (*Hexham case*, 4 O.M. & H. 145).

The law intends by sect. 22 and this section to enable judges to relieve candidates from all responsibility for corrupt and illegal (in this section only illegal) practices, where they satisfy the judges that they have done everything on their part to render the election pure and free from corruption. It is for the candidate and his election agent to prove, when such relief is asked for, that they personally took all reasonable means for preventing the commission of corrupt and illegal practices. (*Rochester case*, 4 O.M. & H. 160.)

Where relief is sought for under the powers which the

ception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Election Expenses.

Nomina-
tion of
election
agent.

24. (1.) On or before the day of nomination at an election, a person shall be named by or on behalf of each candidate as his agent for such election (in this Act referred to as the election agent) (*h*).

(2) A candidate may name himself as election agent, and thereupon shall, so far as circumstances admit, be subject to the provisions of this Act both as a candidate and as an election agent, and any

Act confers upon the Court, the person who obtains that relief always has himself to bear the cost of obtaining it. If therefore the respondent in an election petition delays until the last moment to come and ask for it, so that the whole case has to be fought out, he has only himself to thank for not taking an earlier opportunity of giving notice of what he intends to do, and thereby giving the petitioners an opportunity of reconsidering their position. (Per Cave, J., *Stepney case*, 1892, 4 O'M. & H. 183.)

(*h*) The object of the Act is that a person shall be the election agent who shall be effectively responsible for all the acts done in procuring the election. No contract is to be made by anybody but him; he is the person to make the contracts, because he is a known and responsible man, who can be dealt with afterwards, and who can be looked to afterwards for an explanation of his conduct in the management of the election. The object of the Act was, that the affairs of the election should be carried on in the light of day; and that a respectable and responsible man, responsible to the candidate and to the public, should be there to do all that was necessary. (Per Field, J., *Barrow-in-Furness case*, 4 O'M. & H. 82.)

reference in this Act to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.

(3) On or before the day of nomination the name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer (*i*), and the returning officer shall forthwith give public notice of the name and address of every election agent so declared.

(4.) One election agent only shall be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked, and in the event of such revocation or his death, whether such event is before, during, or after the election, then forthwith another election agent shall be appointed, and his name and address declared in writing to the returning officer, who shall forthwith give public notice of the same.

25. (1.) In the case of the elections specified in that behalf in the First Schedule to this Act an election agent (*k*) of a candidate may appoint the number of deputies therein mentioned (which deputies are in this Act referred to as sub-agents), to act within different polling districts.

(2.) As regards matters in a polling district the election agent may act by the sub-agent for that

(*i*) "Returning officer." See sect. 8 of the Ballot Act, 1872 (35 & 36 Vict. c. 33); and see also the Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84).

(*k*) "Election agent." See preceding section and notes thereto.

district, and anything done for the purposes of this Act by or to the sub-agent in his district shall be deemed to be done by or to the election agent, and any act or default of a sub-agent which, if he were the election agent, would be an illegal practice or other offence against this Act, shall be an illegal practice and offence against this Act committed by the sub-agent, and the sub-agent shall be liable to punishment accordingly; and the candidate shall suffer the like incapacity as if the said act or default had been the act or default of the election agent.

(3.) One clear day before the polling the election agent shall declare in writing the name and address of every sub-agent to the returning officer (*l*), and the returning officer shall forthwith give public notice of the name and address of every sub-agent so declared.

(4.) The appointment of a sub-agent shall not be vacated by the election agent who appointed him ceasing to be election agent, but may be revoked by the election agent for the time being of the candidate, and in the event of such revocation or of the death of a sub-agent another sub-agent may be appointed, and his name and address shall be forthwith declared in writing to the returning officer, who shall forthwith give public notice of the same.

Office of
election
agent and
sub-
agent.

26. (1.) An election agent (*m*) at an election for a county or borough shall have within the county or

(*l*) "Returning officer." See note as to "returning officer" under the preceding section.

(*m*) "Election agent." See sect. 24.

borough, or within any county of a city or town adjoining thereto, and a sub-agent shall have within his district, or within any county of a city or town adjoining thereto, an office or place to which all claims, notices, writs, summons, and documents may be sent, and the address of such office or place shall be declared at the same time as the appointment of the said agent to the returning officer, and shall be stated in the public notice of the name of the agent.

(2.) Any claim, notice, writ, summons, or document delivered at such office or place and addressed to the election agent or sub-agent, as the case may be, shall be deemed to have been served on him, and every such agent may in respect of any matter connected with the election in which he is acting be sued in any Court having jurisdiction in the county or borough in which the said office or place is situate.

27. (1.) The election agent (*n*) of a candidate by himself or by his sub-agent shall appoint every polling agent, clerk, and messenger employed for payment on behalf of the candidate at an election, and hire every committee room hired on behalf of the candidate. Making of contracts through election agent.

(2.) A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate at such election unless made by the candidate himself or by his election agent, either by himself or by his sub-agent; provided that the in-

(*n*) "Election agent." See sect. 24, and note thereto.

ability under this section to enforce such contract against the candidate shall not relieve the candidate from the consequences of any corrupt or illegal practice having been committed by his agent.

Payment
of ex-
penses
through
election
agent.

28. (1.) Except as permitted by or in pursuance of this Act, no payment and no advance or deposit shall be made by a candidate at an election (*o*) or by any agent on behalf of the candidate or by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election (*p*), otherwise than by or through the election agent of the candidate, whether acting in person or by a sub-agent; and all money provided by any person other than the candidate (*q*) for any

(*o*) "A candidate at an election" is defined by sect. 63.

(*p*) But under this section the Court will in every case consider (not by reference only to that definition but on all the facts) whether the payment in question is a payment "in respect of the conduct or management of such election." Thus the expenses of two meetings held to induce the respondent to stand, and of a requisition to him for that purpose, are not expenses in respect of such election. (*Norwich case*, 4 O.M. & H. 86.) Expenses connected with improving the registration of the borough in the interest of the candidate and his party are not within this section; nor is the starting of a newspaper, advocating the candidate's political views. What is or is not such expense is a question of fact for the Court, as a jury, to decide. (*Kennington case*, 4 O.M. & H. 93.)

(*q*) "Any person other than the candidate." If money is spent illegally by an agent of the candidate to promote his return, wherever the money came from, such expenditure will be fatal to the candidate who succeeds by its help. Thus, where money was paid by one who was admitted to be an agent of the candidate, in order to enable roughs to be hired for keeping order at that candidate's meeting, this was

expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, shall be paid to the candidate or his election agent and not otherwise;

Provided that this section shall not be deemed to apply to a tender of security to or any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense (*r*) legally incurred by himself, if such sum is not repaid to him.

(2.) A person who makes any payment, advance, or deposit in contravention of this section, or pays in contravention of this section any money so provided as aforesaid, shall be guilty of an illegal practice.

held to be an illegal practice within the section. It does not matter under this section whether the expenses are incurred by the election agent or by any other person. (*Ipswich case*, 4 O'M. & H. 74.) [NOTE.—Volunteers may be employed to keep order; and, where serious disorder is apprehended, it may be wise to swear in such volunteers as special constables. (Per Cave, J., in the same case.)]

Where certain payments had been made by the secretary of a political association on account of the election, and also, acting under the orders of such secretary, by a member of such association, and these payments were not included in the return of the election agent, but the secretary of the parent association repaid to the member of the local branch the sums so paid by him, the Court held that both persons had infringed this section, and their votes were struck off. (*Buckrose case*, 4 O'M. & H. 116.)

(*r*) The proviso is meant to apply to such small payments as the hire, *e. g.* of a cab by a canvasser in order to go round canvassing, or for postage, &c., where the payer is not and does not intend to be repaid. Twenty pounds' worth of placards cannot be so excused; 2s. 6*d.* worth of cartoons possibly might. (*Norwich case*, 4 O'M. & H. 89.)

Period for
sending in
claims and
making
payments
for elec-
tion ex-
penses.

29. (1.) Every payment made by an election agent, whether by himself or a sub-agent, in respect of any expenses incurred on account of or in respect of the conduct or management of an election, shall, except where less than forty shillings, be vouched for by a bill stating the particulars and by a receipt.

(2.) Every claim against a candidate at an election (s) or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election which is not sent in to the election agent within the time limited by this Act shall be barred and shall not be paid; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of this enactment shall be guilty of an illegal practice.

(3.) Except as by this Act permitted, the time limited by this Act for sending in claims shall be fourteen days after the day on which the candidates returned are declared elected.

(4.) All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, shall be paid within the time limited by this Act and not otherwise; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.

(5.) Except as by this Act permitted, the time

(s) "Candidate at an election." See sect. 63.

limited by this Act for the payment of such expenses as aforesaid shall be twenty-eight days after the day on which the candidates returned are declared elected.

(6.) Where the election court reports that it has been proved to such court by a candidate that any payment made by an election agent in contravention of this section was made without the sanction or connivance of such candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(7.) If the election agent in the case of any claim sent in to him within the time limited by this Act disputes it, or refuses or fails to pay it within the said period of twenty-eight days, such claim shall be deemed to be a disputed claim.

(8.) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court (*t*); and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by this Act, and to be an exception from the provisions of this Act, requiring claims to be paid by the election agent.

(9.) On cause shown to the satisfaction of the High Court, such Court on application by the claimant or by the candidate or his election agent may by

(*t*) See the County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 56—65.

order give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims, or although the same was sent in to the candidate and not to the election agent.

(10.) Any sum specified in the order of leave may be paid by the candidate or his election agent, and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Act.

Reference
to taxation
of claim
against
candi-
dates.

30. If any action is brought in any competent court to recover a disputed claim against a candidate at an election (*x*), or his election agent, in respect of any expenses incurred on account or in respect of the conduct or management of such election, and the defendant admits his liability, but disputes the amount of the claim, the said amount shall, unless the court, on the application of the plaintiff in the action, otherwise directs, be forthwith referred for taxation to the master, official referee, registrar, or other proper officer of the court, and the amount found due on such taxation shall be the amount to be recovered in such action in respect of such claim.

Personal
expenses
of candi-
date and
petty
expenses.

31. (1.) The candidate at an election (*x*) may pay any personal expenses (*y*) incurred by him on account of or in connection with or incidental to such election to an amount not exceeding one hundred pounds, but

(*x*) "Candidate at an election." See sect. 63.

(*y*) "Personal expenses." See sect. 64.

any further personal expenses so incurred by him shall be paid by his election agent (z).

(2.) The candidate shall send to the election agent within the time limited by this Act for sending in claims a written statement of the amount of personal expenses paid as aforesaid by such candidate.

(3.) Any person may, if so authorised in writing by the election agent of the candidate, pay any necessary expenses for stationery, postage, telegrams, and other petty expenses, to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.

(4.) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent within the time limited by this Act (a) for the sending in of claims, and shall be vouched for by a bill containing the receipt of that person.

32. (1.) So far as circumstances admit, this Act shall apply to a claim for his remuneration by an election agent (b) and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim the claim shall be a disputed claim within the meaning of this Act, and be dealt with accordingly.

Remuneration of election agent and returning officer's expenses.

(2.) The account of the charges claimed by the

(z) "Election agent." See sect. 24.

(a) "Within the time limited by this Act." See sect. 29 (3).

(b) See sect. 24.

38 & 39
Vict.
c. 84.

returning officer in the case of a candidate, and transmitted in pursuance of section four of the Parliamentary Elections (Returning Officers) Act, 1875, shall be transmitted within the time specified in the said section (c) to the election agent of the candidate, and need not be transmitted to the candidate.

Return
and de-
claration
respecting
election
expenses.

33. (1.) Within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of every candidate at that election shall transmit to the returning officer a true return (d) (in this Act referred to as a return respecting election expenses), in the form set forth in the Second Schedule (e) to this Act or to the like effect, containing, as respects that candidate,—

(a) A statement of all payments made by the

(c) *I. e.* “within twenty-one days after the day on which the return is made of the persons elected at the election.” By the same section, “the returning officer shall not be entitled to any charges which are not duly included in his account.” If any part of the returning officer’s claim is objected to, application may be made (within fourteen days from the time when the account was transmitted) to the Lord Mayor’s Court in London, and elsewhere in England to the County Court, and in Ireland to the Civil Bill Court, having jurisdiction at the place of nomination; which Court has jurisdiction to tax his account.

(d) Inspection may be had and copies obtained of this return on payment of the respective fees mentioned in sect. 35 (2).

(e) *E. g.* where the names of the persons from whom rooms had been hired were (contrary to the form in the schedule) omitted, and where the election agent had included his own personal expenses in the sums paid for hiring the rooms, it was held that these things formed a *prima facie* case of illegal practice under this section; but it was excused under the circumstances by an authorized excuse which the Court has power to allow under sect. 34. (*Buckrose case*, 4 O’M. & H. 118.)

election agent, together with all the bills and receipts (which bills and receipts are in this Act included in the expression "return respecting election expenses");

- (b) A statement of the amount of personal expenses, if any, paid by the candidate;
- (c) A statement of the sums paid to the returning officer for his charges, or, if the amount is in dispute, of the sum claimed and the amount disputed;
- (d) A statement of all other disputed claims of which the election agent is aware;
- (e) A statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court;
- (f) A statement of all money, securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received.

(2.) The return so transmitted to the returning officer shall be accompanied by a declaration (*f*) made by the election agent before a justice of the peace in the form in the Second Schedule to this Act

(*f*) "Declaration." Inspection may be had and copies obtained of this declaration on payment of the respective fees mentioned in sect. 35 (2).

(which declaration is in this Act referred to as a declaration respecting election expenses).

(3.) Where the candidate has named himself (*g*) as his election agent, a statement of all money, securities, and equivalent of money paid by the candidate shall be substituted in the return required by this section to be transmitted by the election agent for the like statement of money, securities, and equivalent of money received by the election agent from the candidate; and the declaration by an election agent respecting election expenses need not be made, and the declaration by the candidate respecting election expenses shall be modified as specified in the Second Schedule to this Act.

(4.) At the same time that the agent transmits the said return, or within seven days afterwards, the candidate shall transmit or cause to be transmitted to the returning officer a declaration made by him before a justice of the peace, in the form in the first part of the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).

(5.) If in the case of an election for any county or borough, the said return and declarations are not transmitted before the expiration of the time limited for the purpose, the candidate shall not, after the expiration of such time, sit or vote in the House of Commons as member for that county or borough until either such return and declarations have been transmitted, or until the date of the allowance of

(*g*) See sect. 24 (2).

such an authorised excuse for the failure to transmit the same, as in this Act mentioned, and if he sits or votes in contravention of this enactment he shall forfeit one hundred pounds for every day on which he so sits or votes to any person who sues for the same.

(6.) If without such authorised excuse as in this Act mentioned, a candidate or an election agent fails to comply with the requirements of this section, he shall be guilty of an illegal practice.

(7.) If any candidate or election agent knowingly makes the declaration required by this section falsely, he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment (*h*) for wilful and corrupt perjury; such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

(8.) Where the candidate is out of the United Kingdom at the time when the return is so transmitted to the returning officer, the declaration required by this section may be made by him within fourteen days after his return to the United Kingdom, and in that case shall be forthwith transmitted to the returning officer, but the delay hereby authorised in making such declaration shall not exonerate the election agent from complying with the provisions of this Act as to the return and declaration respecting election expenses.

(*h*) *Viz.*, to a maximum punishment of seven years' penal servitude. (2 Geo. 2, c. 25, s. 2; 20 & 21 Vict. c. 3; and 54 & 55 Vict. c. 69, s. 1. See Archbold's Criminal Pleadings (21st ed.), p. 929.)

(9.) Where, after the date at which the return respecting election expenses is transmitted, leave is given by the High Court for any claims to be paid, the candidate or his election agent shall, within seven days after the payment thereof, transmit to the returning officer a return of the sums paid in pursuance of such leave accompanied by a copy of the order of the court giving the leave, and in default he shall be deemed to have failed to comply with the requirements of this section without such authorised excuse as in this Act mentioned.

Authorised
excuse for
non-compliance
with
provisions
as to
return and
declaration
respecting
election
expenses.

34. (1.) Where the return and declarations respecting election expenses of a candidate at an election for a county or borough have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then—

- (a) if the candidate applies to the High Court or an election court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, or misconduct of his election agent or sub-agent or of any clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, or
- (b) if the election agent of the candidate applies to the High Court or an election court and shows that the failure to transmit the return and declarations which he was required to trans-

mit, or any part thereof, or any error or false statement therein, arose by reason of his illness or of the death or illness of any prior election agent of the candidate, or of the absence, death, illness, or misconduct of any sub-agent, clerk, or officer of an election agent of the candidate, or by reason of inadvertence (i) or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

(i) "Inadvertence." Thus, where men were employed and paid to force canvassing handbills into the hands of every voter, and to prevent anyone else from approaching them by superior physical force—not only to distribute them but to tout for votes—the return described the payment as one for "distributing bills." Denman, J., thought that the description was inaccurate and insufficient; but he thought that the inaccuracy and insufficiency arose not from any want of good faith, but from inadvertence arising from difficulties in understanding the Act. But he intimated in his judgment, that in future a similar case would not be so leniently treated. (*Stepney case*, 1886, 4 O'M. & H. 53.)

So, again, in the *Norwich case* (4 O'M. & H. 91), insufficient description of clerks and messengers was excused as inadvertent; but there, too, Cave, J., rested his decision on the ground that this part of the Act had never been yet interpreted. It does not therefore follow that the same excuse would be allowed now.

Where the names of the persons from whom rooms had been hired were omitted from the return, and the election agent had included his own personal expenses in the sums paid for hiring the rooms, the Court held that these things had been done through inadvertence, and used their powers under this section, having regard to the fact that there was nothing in the general account of a suspicious character, and to the fact that the Court were perfectly satisfied that there had been not only no money misspent, but that there had been no intention in the framing of this account to mislead anybody in this important particular. (*Buckrose case*, 4 O'M. & H. 119.)

the court may, after such notice (*k*) of the application in the said county or borough, and on production of such evidence of the grounds stated in the application, and of the good faith of the application, and otherwise, as to the court seems fit, make such order for allowing an authorised excuse for the failure to transmit such return and declaration, or for an error or false statement in such return and declaration, as to the court seems just.

(2.) Where it appears to the court that any person being or having been election agent or sub-agent has refused or failed to make such return or to supply such particulars as will enable the candidate and his election agent respectively to comply with the provisions of this Act as to the return and declaration respecting election expenses, the court before making an order allowing the excuse as in this section mentioned shall order such person to attend before the court, and on his attendance shall, unless he shows cause to the contrary, order him to make the return and declaration, or to deliver a statement of the particulars required to be contained in the return, as to the court seem just, and to make or deliver the same within such time and to such person and in such manner as the court may direct, or may order him to be examined with respect to such particulars, and may in default of compliance with any such order order him to pay a fine not exceeding five hundred pounds.

(*k*) In the *Norwich case* (4 O'M. & H. 90), notice given in Court, where persons interested were present, was held enough to satisfy the statute.

(3.) The order may make the allowance conditional upon the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the court seem best calculated for carrying into effect the objects of this Act; and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the court that any act or omission of the election agent in relation to the return and declaration respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the court shall relieve the candidate from the consequences of such act or omission on the part of his election agent.

(4.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

35. (1.) The returning officer at an election within ten days after he receives from the election agent of a candidate a return respecting election expenses shall publish a summary of the return in not less than two newspapers circulating in the county or borough for which the election was held, accompanied by a notice of the time and place at which the return and declarations (including the accompanying documents) can be inspected, and may charge the candidate in respect of such publication, and the amount

Publica-
tion of
summary
of return
of election
expenses.

38 & 39
Vict.
c. 84.

of such charge shall be the sum allowed by the Parliamentary Elections (Returning Officers) Act, 1875 (*l*).

(2.) The return (*m*) and declarations (including the accompanying documents) sent to the returning officer by an election agent shall be kept at the office of the returning officer, or some convenient place appointed by him, and shall at all reasonable times during two years next after they are received by the returning officer be open to inspection by any person on payment of a fee of one shilling, and the returning officer shall on demand furnish copies thereof or any part thereof at the price of twopence for every seventy-two words. After the expiration of the said two years the returning officer may cause the said return and declarations, (including the accompanying documents,) to be destroyed, or, if the candidate or his election agent so require, shall return the same to the candidate.

Disqualification of Electors.

Prohibition of persons guilty of corrupt or illegal practices, &c. from voting.

36. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at an election is prohibited from voting at such election, and if any such person votes his vote shall be void (*n*).

(*l*) *Viz.* in counties and district or contributory boroughs 2*l.* 2*s.*, and in other boroughs 1*l.* 1*s.* (See sect. 2 of the Act cited, and the first schedule thereto annexed.)

(*m*) On the trial of an election petition the Court will allow the Public Prosecutor to have a copy of the respondent's return of election expenses. (*Hexham case*, 4 O'M. & H. 143.)

(*n*) Field, J., said:—"Corruptness is the essence of dis-

37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882 (*o*), or under any other Act (*p*) for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited (*q*) from voting at any such election, and his vote shall be void.

Prohibition of disqualified persons from voting.
35 & 36 Vict. c. 60.
45 & 46 Vict. c. 50.

38. (1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom

Hearing of person before he

qualification under this section.” *Stepney case*, 1886, 4 O’M. & H. 48.) In that case a voter was inadvertently registered as entitled to vote for each of two divisions, whereas he was really only entitled to vote for one; he was ignorant of the law, and had acted conscientiously by mistake; he had no corrupt intentions, and was not corruptly influenced. It was held that this was not personation, and did not invalidate the first vote. *Seem*, that it might be otherwise if a man, deliberately intending to do wrong, went and gave the first vote, intending to give a second: then the words, “if any such person votes his vote shall be void,” would apply to both votes.

Corrupt practice is defined by sect. 3 of this Act. Sects. 7—9 deal with illegal practice. Sects. 13—20 with illegal employment, payment or hiring.

(*o*) The former of these Acts cited is repealed by the latter.

(*p*) See Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70).

(*q*) This section is important, as showing that the existence of actual incapacity is not sufficient to prevent a man’s voting, *unless* it were stated that incapacity should be prohibition, and amounted to prohibition. What may be an objection to registration is not necessarily a ground of objection to the exercise of the franchise by freemen. (*Londonderry case*, 4 O’M. & H. 103.)

is reported
guilty of
corrupt or
illegal
practice,
and in-
capacity
of person
reported
guilty.

the seat is claimed by an election petition, is reported by an election court, and before any person is reported by election commissioners, to have been guilty, at an election, of any corrupt or illegal practice, the court or commissioners, as the case may be, shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

(2.) Every person reported by election commissioners (*r*) to have been guilty at an election of any corrupt or illegal practice may appeal against such report to the next court of oyer and terminer or gaol delivery held in and for the county or place in which the offence is alleged to have been committed, and such court may hear and determine the appeal; and subject to rules of court such appeal may be brought, heard, and determined in like manner as if the court were a court of quarter sessions and the said commissioners were a court of summary jurisdiction, and the person so reported had been convicted by a court of summary jurisdiction for an offence under this Act, and notice of every such appeal shall be given to the Director of Public Prosecutions in the manner and within the time directed by rules of court, and subject to such rules then within three days after the appeal is brought.

(3.) Where it appears to the Lord Chancellor that appeals under this section are interfering or are likely

(*r*) "Election Commissioners." See sect. 64.

to interfere with the ordinary business transacted before any courts of oyer and terminer or gaol delivery, he may direct that the said appeals, or any of them, shall be heard by the judges for the time being on the rota for election petitions, and in such case one of such judges shall proceed to the county or place in which the offences are alleged to have been committed, and shall there hear and determine the appeals in like manner as if such judge were a Court of oyer and terminer.

(4.) The provisions of the Parliamentary Elections Act, 1868 (*s*), with respect to the reception and powers of and attendance on an election court, and to the expenses of an election court, and of receiving and accommodating an election court, shall apply as if such judge were an election court.

(5.) Every person who after the commencement of this Act is reported by any election court or election commissioners to have been guilty of any corrupt (*t*) or illegal practice (*u*) at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty : Provided that a report of any election commissioners inquiring into an election for a county or borough shall not avoid the election of any candidate who has been declared by an election court on the trial of a

(*s*) 31 & 32 Vict. c. 125, beginning sect. 28.

(*t*) See sect. 6 (3).

(*u*) See sect. 11.

petition respecting such election to have been duly elected at such election or render him incapable of sitting in the House of Commons for the said county or borough during the Parliament for which he was elected.

(6.) Where a person who is a justice of the peace is reported by any election court or election commissioners to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor of Great Britain with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being, or having been, mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court or election commissioners to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession (*x*), and such Inn of

(*x*) A barrister may be disbarred by his Inn, subject to an appeal to the judges. As to other professions, see Solicitors

Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a license or certificate under the Licensing Acts (*y*) (in this section referred to as a licensed person) the following provisions shall have effect :

- (a) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses (*z*).
- (b) If it appears to an election court or election commissioners that a licensed person has knowingly suffered any bribery (*a*) or treating in reference to any election to take place upon his licensed premises, such court or commissioners (subject to the provisions of this Act as to a

Act, 1888 (51 & 52 Vict. c. 65), ss. 12—15; Medical Act, 1858 (21 & 22 Vict. c. 90), s. 29; Dentists Act, 1878 (41 & 42 Vict. c. 33); and Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), s. 6.

(*y*) See sect. 64 of this Act. The Acts referred to are the Licensing Acts, 1872 and 1874 (35 & 36 Vict. c. 94, and 37 & 38 Vict. c. 49).

(*z*) See sect. 36 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), which provides for a register of licenses to be kept in every licensing district, on which shall be entered all forfeitures of licenses, disqualifications of premises, records of convictions, and other matters relating to the licenses on the register.

(*a*) "Bribery." See the Third Schedule to this Act, where the enactments defining "Bribery" are set forth.

"Treating"—see sect. 1.

person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and whether such person obtained a certificate of indemnity or not it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses.

- (c) Where an entry is made in the register of licences of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal (*b*).

(9.) Where the evidence showing any corrupt practice to have been committed by a justice of the peace, barrister, solicitor, or other professional person, or any licensed person, was given before election commissioners, those commissioners shall report the case to the Director of Public Prosecutions, with such

(*b*) See the Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 42; the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), ss. 8 and 19 [by which it is not lawful for the justices to refuse an application except on certain grounds therein mentioned]; and the Beer Dealers' Retail Licenses Act, 1882 (45 & 46 Vict. c. 34).

information as is necessary or proper for enabling him to act under this section.

(10.) This section shall apply to an election court under this Act, or under Part IV. of the Municipal Corporations Act, 1882 (*c*), and the expression election shall be construed accordingly (*d*).

39. (1.) The registration officer (*e*) in every county and borough shall annually make out a list containing the names and description of all persons who, though otherwise qualified to vote at a parliamentary election for such county or borough respectively, are not capable of voting by reason of having after the commencement of this Act been found guilty of a corrupt or illegal practice on conviction or by the report of any election court or election commissioners whether under this Act, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office; and such officer shall state in the list (in this

List in register of voters of persons incapacitated for voting by corrupt or illegal practices.

45 & 46
Vict. c. 50.

(*c*) 45 & 46 Vict. c. 50.

(*d*) Cf. sect. 64.

(*e*) The "registration officer." See sect. 64; and cf. the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), s. 101, by which the words "clerk of the peace" comprehend and apply to any deputy or other person executing the duties of such clerk of the peace, and the words "town clerk," except in regard to the cities of London and Southwark, extend to and mean "any person executing the duties of town clerk, or if in any city or borough there shall be no such officer as town clerk, then to any officer executing the same or like duties as usually devolve upon the town clerk, or if in any city or borough there shall be no such person, then to the returning officer of such city or borough, or to such person as the returning officer might appoint for that purpose."

Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2.) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in any of the following places; that is to say,

(a) if he is the registration officer of a county, in that county, or in any borough in that county; and

(b) if he is the registration officer of a borough, in the county in which such borough is situate, or in any borough in that county.

(3.) The registration officer shall send the list to the overseers of every parish within his county or borough, together with his precept, and the overseers shall publish the list together with the list of voters, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to vote, or, as circumstances require, add "objected" before his name in the list of claimants or copy of the register published by them, in like manner as is required by law in any other cases of disqualification.

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any list of voters for the county or borough may object to the omission of the name of any person from such

list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the registration of parliamentary electors.

(5.) The revising barrister shall determine such claims and objections and shall revise such list in like manner as nearly as circumstances admit as in the case of other claims and objections, and of any list of voters.

(6.) Where it appears to the revising barrister that a person not named in the corrupt and illegal practices list is subject to have his name inserted in such list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in such list and expunge his name from any list of voters.

(7.) A revising barrister in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the register of electors, and shall be printed and published therewith wherever the same is printed or published.

Proceedings on Election Petition.

Time for
presenta-
tion of
election
petitions
alleging
illegal
practice.
31 & 32
Vict.
c. 125.

40. (1.) Where an election petition questions the return or the election upon an allegation of an illegal practice, then notwithstanding anything in the Parliamentary Elections Act, 1868, such petition, so far as respects such illegal practice, may be presented within the time following; (that is to say),

(a) At any time before the expiration of fourteen days after the day on which the returning officer receives the return and declarations respecting election expenses by the member to whose election the petition relates and his election agent.

(b) If the election petition specifically alleges a payment of money, or some other act to have been made or done since the said day by the member or an agent of the member, or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days after the date of such payment or other act.

31 & 32
Vict.
c. 125.

(2.) Any election petition presented within the time limited by the Parliamentary Elections Act, 1868 (*f*), may for the purpose of questioning the

(*f*) By sect. 6 of the Act cited, "The petition shall be presented within twenty-one days after the return has been made to the Clerk of the Crown in Chancery in England, or to the Clerk of the Crown and Hanaper in Ireland, as the case may be, of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member,

return or the election upon an allegation of an illegal practice (g) be amended with the leave of the High Court (h) within the time within which a petition questioning the return upon the allegation of that illegal practice can under this section be presented.

(3.) This section shall apply in the case of an offence relating to the return and declarations respecting election expenses in like manner as if it were an illegal practice, and also shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice.

(4.) For the purposes of this section—

- (a) where the return and declarations are received on different days, the day on which the last of them is received, and
- (b) where there is an authorised excuse for failing to make and transmit the return and declarations respecting election expenses, the date of the allowance of the excuse, or if there was a failure as regards two or more of them, and the excuse was allowed at different times, the date of the allowance of the last excuse,

or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment." The twenty-one days must be twenty-one working days, and Sundays are excluded. (*Pease v. Norwood*, 4 C. P. 238. Cf. sect. 49 of the same Act.)

(g) No distinction is drawn for this purpose between an illegal practice and an illegal payment, employment, or hiring, which is not an illegal practice. (*Buckrose case*, 4 O'M. & H. 117.)

(h) See sect. 56, and note.

shall be substituted for the day on which the return and declarations are received by the returning officer.

(5.) For the purposes of this section, time shall be reckoned in like manner as it is reckoned for the purposes of the Parliamentary Elections Act, 1868 (*i*).

With-
drawal of
election
petition.

41. (1.) Before leave for the withdrawal of an election petition (*k*) is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, and by the election agents of all of the said parties who were candidates at the election, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the Court on special grounds to be just so to do.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set

(*i*) By sect. 49 of the Act cited, "In reckoning time for the purposes of this Act, Sunday, Christmas Day, and Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded."

(*k*) "Leave for the withdrawal of an election petition." The Court cannot be a party to any arrangement, since an election petition involves much more than a question between the immediate parties in it. Thus the Court would not consent to a judgment declaring the election void without hearing evidence, where a pastoral letter read throughout the whole county had been decided to be "undue influence" within sect. 2 in the other division of the county. One of the judges was not a member of the Court on the trial of the former petition, and both the judges desired to hear the evidence at the present trial. (*North Meath case*, 4 O'M. & H. 187.)

forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of Public Prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of Public Prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of Public Prosecutions or his assistant, or other representative, may consider material.

(6.) Where in the opinion of the court the pro-

31 & 32
 Viet. c.
 125.

posed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section thirty-five of the Parliamentary Elections Act, 1868, where the withdrawal is induced by a corrupt consideration.

(7.) In every case of the withdrawal of an election petition the court shall report to the Speaker whether, in the opinion of such court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

(9.) Where a person not a solicitor is lawfully acting as agent in the case of an election petition, that agent shall be deemed to be a solicitor for the purpose of making an affidavit in pursuance of this section.

Continua-
 tion of
 trial of
 election
 petition.

42. The trial of every election petition, so far as is practicable, consistently with the interests of justice in respect of such trial, shall be continued *de die in diem* on every lawful day (*l*) until its conclusion,

(*l*) "Lawful day." A phrase from Scotch law. All the days of the week except Sunday, or the fast days appointed by Government, are called *lawful days*; and no legal dili-

and in case the rota of judges for the year shall expire before the conclusion of the trial, or of all the proceedings in relation or incidental to the petition, the authority of the said judges shall continue for the purpose of the said trial and proceedings.

43. (1.) On every trial of an election petition the Director of Public Prosecutions shall by himself or by his assistant, or by such representative as herein-after mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend, with a view to report him as guilty of any corrupt or illegal practice.

Attend-
ance of
Director
of Public
Prosecu-
tions on
trial of
election
petition,
and prose-
cution
by him of
offenders.

(2.) It shall also be the duty of such Director, without any direction from the election court (*m*), if

gence either against person or property can be executed, except on a lawful day. (Bell's Dictionary of the Law of Scotland, *sub voce* "Day.")

(*m*) The Court will not allow the Public Prosecutor to interrupt proceedings in the course of the case, either by cross-examining witnesses or by stating what he intends to do hereafter. (*Buckrose case*, 4 O.M. & H. 115.)

The Public Prosecutor may not cross-examine a witness in order to prove agency. That is for the petitioners to make out. (*Hexham case*, 4 O.M. & H. 144.)

But though the Public Prosecutor has no right to cross-examine witnesses, he has the right, under certain circumstances, to summon a witness; but as to the examination of witnesses, he is bound to obey the directions of the Court. It would be inconvenient and unfair for him to interfere on his own mere motion with every witness. There should be no application on his part to examine a witness, unless it is

it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the election court, if it appears to him that any person who has not received a certificate of indemnity has been guilty of a corrupt or illegal practice, to prosecute such person for the offence before the said court, or if he thinks it expedient (n) in the interests of justice before any other competent court.

founded on something substantial. (*Stepney case*, 1886, 4 O'M. & H. 37.)

The issue between the petitioner and the respondent must first be tried; the Public Prosecutor has no separate *locus standi*, but must wait until the Court invites his intervention. (*Montgomery Boroughs case*, 4 O'M. & H. 168, 169.) There, at the conclusion of the respondent's case, the Court called certain witnesses for their own information, hoping that they might throw further light on obscure parts of the case, though the respondent objected that the petitioner ought not to have an opportunity of benefiting his case by their evidence.

The duties of the Public Prosecutor are in general confined to assisting the Court, at the conclusion of the case, in considering whether any particular individual has been guilty of corrupt and illegal practices. If he has witnesses who will throw light on this, they will be summoned to be in attendance at the close of the case. But, if there should be, in his opinion, any collusive withholding of evidence, it would be his duty to interfere, and to call that evidence himself. But the Court is cautious how it allows him to do so. (*Rochester case*, 4 O'M. & H. 158.)

(n) "Or if he thinks it expedient." He must exercise his own discretion. (*Ipswich case*, 4 O'M. & H. 75.) So in the *West Belfast case* (4 O'M. & H. 109), the Court were of opinion that the initiative in these cases should be left to the

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is rendered subject to under this Act upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence;

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before

Attorney-General for Ireland [= the Director of Public Prosecutions in England, by sect. 69 (8)]; but they ordered that notice should be given to the persons implicated to appear and show cause why they should not be reported by the Court. (Cf. also *Walsall case*, 4 O'M. & H. 123.)

a court of summary jurisdiction, as the case may require, for the said offence ; and in either case may order him to be prosecuted before such court as may be named in the order ; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6.) Upon such order being made,

(a) if the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence ; and

(b) if the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court ; and

(c) if the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted, shall order him to be brought before that court.

(7.) The Director of Public Prosecutions may nominate, with the approval of the Attorney-General, a barrister or solicitor of not less than ten years standing to be his representative for the purpose of this section, and that representative shall receive such remuneration as the Commissioners of Her Majesty's Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Commissioners of Her Majesty's Treasury may approve.

(8.) The costs incurred in defraying the expenses (o) of the Director of Public Prosecutions under this section (including the remuneration of his representative) shall, in the first instance, be paid by the Commissioners of Her Majesty's Treasury, and so far as they are not in the case of any prosecution paid by the defendant shall be deemed to be expenses of the election court; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Commissioners of Her Majesty's Treasury by the parties to the petition (p), or such of them as the court may direct.

(o) This section only applies to the costs of the Public Prosecutor at the trial of the petition; and where the petition is withdrawn (as to which see sect. 41) the Court has no power to order the preliminary costs of the Public Prosecutor, and the costs of the inquiries made by him, to be paid by the parties. (*Devonport case*, 54 L. T. N. S. 733.)

(p) Where the petition is unfounded the public must be protected; and the petitioner will be ordered to pay the costs of the Public Prosecutor under this section. (*Kennington case*, 4 O'M. & H. 95.)

And, on the other hand, where the Public Prosecutor's

Power to
election
court to
order pay-
ment by
county or
borough
or indi-
vidual of
costs of
election
petition.

44. (1.) Where upon the trial of an election petition respecting an election for a county or borough it appears to the election court that a corrupt practice has not been proved to have been committed in reference to such election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows;

- (a) if it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the county or borough; and
- (b) if it appears to the court that any person or

costs have been rendered necessary by the conduct of the respondent and his agent, the respondent must pay such costs. (*Hexham case*, 4 O'M. & H. 152.)

The Public Prosecutor does not get his costs from the petitioner except in a strong case of misconduct. (*Norwich case*, 4 O'M. & H. 92.)

Two persons in the *Rochester case* (4 O'M. & H. 161) whom the Court decided to report as guilty of corrupt treating were ordered to pay so much of the Public Prosecutor's costs as referred to them. (See sect. 44 (2).)

The Attorney-General for Ireland [= the Director of Public Prosecutions in England, by sect. 69 (8)] was not allowed his costs in the *Londonderry case*, 4 O'M. & H. 104; O'Brien, J., remarking that his costs ought to be regarded as part of the ordinary costs incident to the administration of the law in that country.

The Court will make no order about the Public Prosecutor's costs when no special grounds for such order are put forward. (*Walsall case*, 4 O'M. & H. 126.)

persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person.

(3.) The Rules and Regulations of the Supreme Court of Judicature with respect to costs (*q*) to be

(*q*) See Rules of the Supreme Court, 1883, Ord. LXV., and Appendix N.

When the petition *succeeded*, but the charges had been multiplied in a scandalous and reckless way (109 charges; in 75 no evidence offered, in 31 evidence insufficient, 3 proved), the Court gave the petitioner no general costs, but only the

allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under the Parliamentary Elections Act, 1868, and under this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale (*r*), as between solicitor and client (*s*).

costs of the charges proved. (*Pontefract case*, 4 O'M. & H. 202.)

And in the *Ipswich case* (4 O'M. & H. 75) the petition succeeded; but the respondent was given costs of those cases which were included in the particulars, but as to which no evidence was offered at the hearing. No costs were given of cases as to which petitioners had given evidence, but which they failed to prove. Cf. also the *Norwich case*, 4 O'M. & H. 92, and cf. sect. 41 of 31 & 32 Vict. c. 125, and sect. 2 of 42 & 43 Vict. c. 75.

Where the petitioner fails as to charges of corrupt practice, and the respondent as to charges of illegal practice, there will as a rule be no costs. But where, in such a case, the petitioners confessed that they were not in a position to pay anything, the respondent was given half his costs out of the fund in Court. [See sect. 6 of 31 & 32 Vict. c. 125.] Where the respondent asks for relief under sect. 23 of this Act, he must in general pay the costs of obtaining it. (*Stepney case*, 1892, 4 O'M. & H. 184.)

Where the judges differed on certain charges, the respondent was declared duly elected, the petitioner paying the respondent's costs, except as to those charges on which the judges differed. As to those, no costs. (*Montgomery Boroughs case*, 4 O'M. & H. 170.)

(*r*) This is a limitation on the discretion which the Court had under sect. 41 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125). By that section, "All costs, charges, and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, with the exception of such costs and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as

the Court or judge may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the Court or judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part of the petitioner or respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or not on the whole successful. The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client are taxed in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such manner as may be prescribed."

On an application by petitioner's counsel for costs on the higher scale, Cave, J., said:—"The difference between the two scales only comes to about 1 per cent. The costs in election petitions are taxed by the master who deals with election petitions generally, and he will tax them on the usual scale, which does not differ substantially from the other scale." (*Hexham case*, 4 O'M. & H. 151. Cf. *East Manchester case*, 4 O'M. & H. 122.)

See Rules of the Supreme Court, 1883, Ord. LXV., rules 8 and 9, by which costs are taxed on the lower scale, unless on special grounds arising out of the nature and importance or the difficulty or urgency of the case the Court or judge shall order them to be taxed on the higher scale. See notes illustrating such special grounds under the said rule 9 in the Annual Practice.

An election petition is business which in its nature requires a great deal of inconvenient and unusual attention on the part of a solicitor, since it is of a kind in which he is necessarily very seldom engaged, and further it entails the examination of novel documents. It is, moreover, of great importance, as is shown by the duty of dealing with it being cast upon two judges of the High Court, and clearly involves great interests. Taking into account, therefore, the difficulty with which it is accompanied, the Court held in the *Devonport case*, 54 L. T. N. S. 733, that costs ought to be allowed on the higher scale.

Cf. *Montgomery Boroughs case*, 4 O'M. & H. 170. For difference between the two scales, see Appendix N.

The Court has power to lower the costs apparently, even to county court costs. (*Devonport case*, *ubi supra*.)

(s) See Ord. LXV. rule 29. The Court of Chancery had (and the High Court now has), in matters of equitable jurisdiction, a general and discretionary power to give to a suc-

Miscellaneous.

Inquiry by
Director
of Public
Prosecu-
tions into
alleged
corrupt or
illegal
practices.

45. Where information is given to the Director of Public Prosecutions that any corrupt or illegal practices have prevailed in reference to any election, it shall be his duty, subject to the regulations under the Prosecution of Offences Act, 1879 (*t*), to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require.

Removal
of inca-
pacity on
proof that
it was
procured
by per-
jury.

46. Where a person has, either before or after the commencement of this Act, become subject to any incapacity under the Corrupt Practices Prevention Acts (*u*) or this Act, by reason of a conviction or of a report of any election court (*x*) or election commissioners (*x*), and any witness who gave evidence against such incapacitated person upon the proceeding for such conviction or report is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the Court, if satisfied that the conviction or report so far as respects such person was based upon perjury, may order that such incapacity shall thenceforth cease, and the same shall cease accordingly.

cessful party costs as between solicitor and client. (See *Andrews v. Barnes*, 39 C. D. 133.)

And in the *Kennington case*, 4 O'M. & H. 95, the respondent's counsel applied for costs, and referred to this section, stating that it was the practice of the taxing masters not to tax costs as between solicitor and client without some expression from the Court. The Court, thinking it a case for a full indemnity, made an order giving the respondent his costs as between solicitor and client.

(*t*) 42 & 43 Vict. c. 22.

(*u*) See sect. 65 (1) and the Third Schedule.

(*x*) Defined by sect. 64.

47. (1.) Every county shall be divided into polling districts, and a polling place shall be assigned to each district in such manner that, so far as is reasonably practicable, every elector resident in the county shall have his polling place within a distance not exceeding three miles from his residence, so nevertheless that a polling district need not in any case be constituted containing less than one hundred electors.

Amendment of law as to polling districts and polling places.

(2.) In every county the local authority who have power to divide that county into polling districts shall from time to time divide the county into polling districts, and assign polling places to those districts, and alter those districts and polling places in such manner as may be necessary for the purpose of carrying into effect this section.

(3.) The power of dividing a borough into polling districts vested in a local authority by the Representation of the People Act, 1867 (*y*), and the enactments amending the same, may be exercised by such local authority from time to time, and as often as the authority think fit, and the said power shall be deemed to include the power of altering any polling district, and the said local authority shall from time to time, where necessary for the purpose of carrying this section into effect, divide the borough into polling districts in such manner that—

- (a) Every elector resident in the borough, if other than one hereinafter mentioned, shall be enabled to poll within a distance not exceeding one mile

(*y*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 34.

from his residence, so nevertheless that a polling district need not be constituted containing less than three hundred electors; and

- (b) Every elector resident in the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, shall be enabled to poll within a distance not exceeding three miles from his residence, so nevertheless that a polling district need not be constituted containing less than one hundred electors.

(4.) So much of section five of the Ballot Act, 1872 (z), and the enactments amending the same as is in force and is not repealed by this Act, shall apply as if the same were incorporated in this section.

(5.) The expenses incurred by the local authority of a county or borough under this or any other Act in dividing their county or borough into polling districts, and, in the case of a county, assigning polling places to such districts, and in altering any such districts or polling places, shall be defrayed in like manner as if they were expenses incurred by the registration officer in the execution of the enactments respecting the registration of electors in such county or borough (a), and those enactments, so far as is consistent with the tenor thereof, shall apply accordingly.

(z) The Ballot Act, 1872 (35 & 36 Vict. c. 33). The part of the section repealed is from the beginning to "one hundred registered electors." (See the Fifth Schedule to this Act.)

(a) See the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), s. 57.

48. Where the nature of a county is such that any electors residing therein are unable at an election for such county to reach their polling place without crossing the sea or a branch or arm thereof, this Act shall not prevent the provision of means for conveying such electors by sea to their polling place, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by this Act.

Convey-
ance of
voters by
sea in
certain
cases.

49. Notwithstanding the provisions of the Act 15 & 16 Vict. cap. 57, or any amendment thereof, in any case where, after the passing of this Act, any commissioners have been appointed, on a joint address of both Houses of Parliament, for the purpose of making inquiry into the existence of corrupt practices in any election, the said commissioners shall not make inquiries concerning any election that shall have taken place prior to the passing of this Act, and no witness called before such commissioners, or at any election petition after the passing of this Act, shall be liable to be asked or bound to answer any question for the purpose of proving the commission of any corrupt practice (b) at or in relation to any election prior to the passing of this Act: Provided that nothing herein

Election
commis-
sioners not
to inquire
into elec-
tions be-
fore the
passing of
this Act.

(b) "For the purpose of proving the commission of any corrupt practice." But where petitioner's counsel asked a witness in cross-examination, "Are you the man who was reported, for corruptly treating voters, by the Election Commissioners?" Denman, J., would not allow an objection to this question. "I do not think," he said, "that the section means to prevent the asking of such a question as this, viz., whether he is the same person." (*Norwich case*, 4 O'M. & H. 90.)

contained shall affect any proceedings that shall be pending at the time of such passing.

Legal Proceedings.

Trial in
Central
Criminal
Court of
indict-
ment for
corrupt
practice at
instance of
Attorney-
General.

50. Where an indictment as defined by this Act for any offence under the Corrupt Practices Prevention Acts (c) or this Act is instituted in the High Court or is removed into the High Court by a writ of certiorari issued at the instance of the Attorney-General, and the Attorney-General suggests on the part of the Crown that it is expedient for the purposes of justice that the indictment should be tried in the Central Criminal Court, or if a special jury is ordered, that it should be tried before a judge and jury at the Royal Courts of Justice, the High Court may, if it think fit, order that such indictment shall be so tried upon such terms as the Court may think just, and the High Court may make such orders as appear to the Court necessary or proper for carrying into effect the order for such trial.

Limita-
tion of
time for
prosecu-
tion of
offence.

51. (1.) A proceeding against a person in respect of the offence of a corrupt or illegal practice or any other offence under the Corrupt Practices Prevention Acts or this Act shall be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by election commissioners shall be commenced within one year after the offence

(c) "Corrupt Practices Prevention Acts." What this means is explained in the third schedule to this Act. (See sect. 65 (1).)

was committed, or within three months after the report of such commissioners is made, whichever period last expires, so that it be commenced within two years after the offence was committed, and the time so limited by this section shall, in the case of any proceeding under the Summary Jurisdiction Acts for any such offence, whether before an election court or otherwise, be substituted for any limitation of time contained in the last-mentioned Acts.

(2.) For the purposes of this section the issue of a summons, warrant, writ, or other process shall be deemed to be a commencement of a proceeding, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, but save as aforesaid the service or execution of the same on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceeding.

52. Any person charged with a corrupt practice (*d*) Persons charged with corrupt practice may be found guilty of illegal practice. may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence shall for that purpose be an indictable offence), and any person charged with an illegal practice may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt practice, and a person charged with illegal payment,

(*d*) "Charged with a *corrupt practice*." Not a sufficient description of an offence in an indictment. (See *Reg. v. Stroulger*, 11 Q. B. D. 327; and see the next section (sect. 53) and note thereunder.)

employment, or hiring, may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

Application of enactments of 17 & 18 Vict. c. 102, and 26 & 27 Vict. c. 29, relating to prosecutions for bribery. 17 & 18 Vict. c. 102. 26 & 27 Vict. c. 29.

53. (1.) Sections ten, twelve, and thirteen of the Corrupt Practices Prevention Act, 1854, and section six of the Corrupt Practices Prevention Act, 1863 (which relate to prosecutions for bribery and other offences under those Acts), shall extend to any prosecution on indictment for the offence of any corrupt practice (*e*) within the meaning of this Act, and to any action for any pecuniary forfeiture for an offence under this Act, in like manner as if such offence were bribery within the meaning of those Acts, and such indictment or action were the indictment or action in those sections mentioned, and an order under the said section ten may be made on the defendant; but the Director of public prosecutions or any person instituting any prosecution in his behalf or by direction of an election court shall not be deemed to be a private prosecutor, nor required under the said sections to give any security.

(2.) On any prosecution under this Act, whether on indictment or summarily, and whether before an

(*e*) "The offence of any corrupt practice." But "corrupt practice" is not a sufficient description of an offence in an indictment. (See *Reg. v. Stroulger*, 17 Q. B. D. 327.) In that case, the prisoner was tried and convicted on an indictment alleging that at the parliamentary election for Ipswich he was guilty of corrupt practices, against the form of the statute, &c. The majority of the Court held that the indictment was defective, because it did not state specifically of what corrupt practices the prisoner was guilty, but that the defect was cured by verdict.

election court or otherwise, and in any action for a pecuniary forfeiture under this Act, the person prosecuted or sued, and the husband or wife of such person, may, if he or she think fit, be examined as an ordinary witness in the case.

(3.) On any such prosecution or action as aforesaid it shall be sufficient to allege that the person charged was guilty of an illegal practice, payment, employment, or hiring within the meaning of this Act, as the case may be, and the certificate of the returning officer at an election that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at such election, shall be sufficient evidence of the facts therein stated.

54. (1.) All offences under this Act punishable on summary conviction may be prosecuted in manner provided by the Summary Jurisdiction Acts (*f*).

Prosecution on summary conviction, and appeal to quarter sessions.

(2.) A person aggrieved by a conviction by a court of summary jurisdiction for an offence under this Act may appeal (*g*) to general or quarter sessions against such conviction.

55. (1.) Except that nothing in this Act shall authorise any appeal against a summary conviction by an election court (*h*), the Summary Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to the prosecution of an offence sum-

Application of Summary Jurisdiction and Indictable Offences Acts to

(*f*) "Summary Jurisdiction Acts." (11 & 12 Vict. c. 43, and 42 & 43 Vict. c. 49.)

(*g*) Cf. also 20 & 21 Vict. c. 43, s. 14, and 42 & 43 Vict. c. 49, s. 33.

(*h*) "Election Court." See sect. 64.

proceed-
ings before
election
courts.

marily before an election court, in like manner as if it were an offence punishable only on summary conviction, and accordingly the attendance of any person may be enforced, the case heard and determined and any summary conviction by such court be carried into effect and enforced, and the costs thereof paid, and the record thereof dealt with under those Acts in like manner as if the court were a petty sessional court for the county or place in which such conviction took place.

(2.) The enactments (*i*) relating to charges before justices against persons for indictable offences shall, so far as is consistent with the tenor thereof, apply to every case where an election court orders a person to be prosecuted on indictment in like manner as if the court were a justice of the peace.

Exercise
of juris-
diction of
High
Court, and
making of
rules of
court.

56. (1.) Subject to any rules of court, any jurisdiction vested by this Act in the High Court may, so far as it relates to indictments or other criminal proceedings, be exercised by any judge of the Queen's Bench Division, and in other respects (*k*) may either be exercised by one of the judges for the time being on the rota for the trial of election petitions, sitting either in court or at chambers, or may be exercised by a master of the Supreme Court of Judicature in manner directed by and subject to an appeal to the said judges.

(*i*) 11 & 12 Vict. c. 42, and 30 & 31 Vict. c. 35.

(*k*) Thus, a judge who is not on the rota of election judges has no jurisdiction to make an order giving leave to amend the petition under sect. 40 of this Act. (*Pontefract case*, W. N. May 1893, and 62 L. J. Q. B. 375.)

Provided that a master shall not exercise jurisdiction in the case either of an order declaring any act or omission to be an exception from the provisions of this Act with respect to illegal practices, payments, employments, or hirings, or of an order allowing an excuse in relation to a return or declaration respecting election expenses.

(2.) Rules of court may from time to time be made, revoked, and altered for the purposes of this Act, and of the Parliamentary Elections Act, 1868, and the Acts amending the same (*l*), by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can for the time being be made (*m*).

57. (1.) The Director of public prosecutions in performing any duty under this Act shall act in accordance with the regulations under the Prosecution of Offences Act, 1879 (*n*), and subject thereto in accordance with the directions (if any) given to him by the Attorney-General; and any assistant or representative of the Director of public prosecutions in

Director
of public
prosecu-
tions, and
expenses
of prosecu-
tions.
42 & 43
Vict. c. 22.

(*l*) Cf. *e.g.* 42 & 43 Vict. c. 75.

(*m*) See sect. 17 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), and sect. 19 of the Judicature Act, 1881 (44 & 45 Vict. c. 68). The authority is, "any five or more of the following persons, of whom the Lord Chancellor shall be one, *viz.*: the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, and four other judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein."

(*n*) 42 & 43 Vict. c. 22.

performing any duty under this Act shall act in accordance with the said regulations and directions, if any, and with the directions given to him by the Director of public prosecutions.

(2.) Subject to the provisions of this Act, the costs of any prosecution on indictment for an offence punishable under this Act, whether by the Director of public prosecutions or his representative or by any other person, shall, so far as they are not paid by the defendant, be paid in like manner as costs in the case of a prosecution for felony are paid.

Recovery
of costs
payable by
county or
borough or
by person.

58. (1.) Where any costs or other sums (not being costs of a prosecution on indictment) are, under an order of an election court (*o*), or otherwise under this Act, to be paid by a county or borough, the Commissioners of Her Majesty's Treasury shall pay those costs or sums, and obtain repayment of the amount so paid, in like manner as if such costs and sums were expenses of election commissioners paid by them, and the Election Commissioners' Expenses Acts, 1869 and 1871, shall apply accordingly as if they were herein re-enacted, and in terms made applicable to the above-mentioned costs and sums.

32 & 33
Vict. c. 21.
34 & 35
Vict. c. 61.

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Commissioners of Her Majesty's

Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

Supplemental Provisions, Definitions, Savings, and Repeal.

59. (1.) A person who is called as a witness respecting an election before any election court (*p*) shall not be excused from answering any question relating to any offence at or connected with such election, on the ground that the answer thereto may criminate or tend to criminate himself or on the ground of privilege;

Obligation of witness to answer, and certificate of indemnity.

Provided that—

- (a) a witness who answers truly all questions which he is required by the election court to answer shall be entitled (*q*) to receive a certificate of indemnity under the hand of a member of the court stating that such witness has so answered: and
- (b) an answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding,

(*p*) "Election Court" defined by sect. 64.

(*q*) "Entitled." See *Reg. v. Holl* (7 Q. B. D. 575), in which it was decided under sect. 7 of 26 & 27 Vict. c. 29 (now repealed), that where election commissioners have, with reference to a witness before them on the inquiry which they were appointed to make, exercised their judgment as to the right of such witness to receive a certificate, their decision refusing such certificate is conclusive and cannot be reviewed by *mandamus*.

civil or criminal, admissible in evidence against him :

(2.) Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence under the Corrupt Practices Prevention Acts (*r*) or this Act committed by him previously to the date of the certificate at or in relation to the said election, the court having cognisance of the case shall on proof of the certificate stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.

(3.) Nothing in this section shall be taken to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceeding to enforce such incapacity (other than a criminal prosecution).

(4.) This section shall apply in the case of a witness before any election commissioners (*s*), in like manner as if the expression "election court" in this section included election commissioners.

(5.) Where a solicitor or person lawfully acting as agent for any party to an election petition respecting any election for a county or borough has not taken any part or been concerned in such election, the election commissioners inquiring into such election shall not be entitled to examine such solicitor or agent respecting matters which came to his knowledge by reason only of his being concerned as solicitor or agent for a party to such petition.

(*r*) See the third Schedule to this Act.

(*s*) "Election Commissioners" defined by sect. 64.

60. An election court or election commissioners (*t*), when reporting that certain persons have been guilty of any corrupt or illegal practice, shall report whether those persons have or not been furnished with certificates of indemnity; and such report shall be laid before the Attorney-General (accompanied in the case of the commissioners with the evidence on which such report was based) with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in his opinion, be sufficient to support a prosecution.

61. (1.) Section eleven of the Ballot Act, 1872 (*u*), shall apply to a returning officer or presiding officer or clerk who is guilty of any wilful misfeasance or wilful act or omission in contravention of this Act in like manner as if the same were in contravention of the Ballot Act, 1872.

(2.) Section ninety-seven of the Parliamentary Registration Act, 1843 (*x*), shall apply to every

Submission of report of election court or commissioners to Attorney-General.

Breach of duty by officer.
35 & 36
Vict. c. 33.

6 Vict.
c. 18.

(*t*) See sect. 64.

(*u*) By the section cited, "Every returning officer, presiding officer and clerk who is guilty of any wilful misfeasance, or any wilful act or omission in contravention of this Act, shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act or omission, a penal sum not exceeding 100*l*."

(*x*) By the section cited, parties wilfully contravening that Act "shall for every wilful misfeasance, or wilful act of commission or omission contrary to this Act, forfeit to any party aggrieved the penal sum of 100*l*., or such less sum, as the jury, before whom may be tried any action to be brought for the recovery of the before-mentioned sum, shall consider just to be paid to such party, to be recovered by such party, with full costs of suits, by action for debt in any of her Majesty's Superior Courts: provided always, that nothing herein con-

registration officer who is guilty of any wilful misfeasance or wilful act of commission or omission contrary to this Act in like manner as if the same were contrary to the Parliamentary Registration Act, 1843.

Publica-
tion and
service of
notices.
35 & 36
Vict. c. 33.

62. (1.) Any public notice required to be given by the returning officer under this Act shall be given in the manner in which he is directed by the Ballot Act, 1872, to give a public notice.

(2.) Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting an election for a county or borough, whether for the purpose of causing him to appear before the High Court or any election court, or election commissioners, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any court or commissioners, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said county or borough, or if the proceeding is before any court or commissioners, in such other manner as the court or commissioners may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

tained shall be construed to supersede any remedy or action against any returning officer according to any law now in force."

(3.) In the form of notice of a parliamentary election set forth in the Second Schedule to the Ballot Act, 1872, the words "or any illegal practice" shall be inserted after the words "or other corrupt practices," and the words the "Corrupt and Illegal Practices Prevention Act, 1883," shall be inserted after the words "Corrupt Practices Prevention Act, 1854."

63. (1.) In the Corrupt Practices Prevention Acts, as amended by this Act, the expression "candidate at an election" and the expression "candidate" respectively mean (*y*), unless the context otherwise

Definition of candidate, and saving for persons

(*y*) This section was explained in the *Norwich case* (4 O'M. & H. 84). It was proved in that case that two meetings had been held to ask the respondent to stand, and a requisition to him for that purpose had been carried round. The expenses of such meetings and requisition were held not to be expenses of the candidate returnable under sect. 28. But it would be incorrect to say that there may not be such a thing as a person who is elected, and in whose case an illegal act was committed before the dissolution or vacancy, who might be a "candidate" within the meaning of this section. "I read the section," says Denman, J., "as dividing the persons who are to be considered 'candidates' into two classes—one is the successful candidate, *i.e.*, the person who is elected; and the other is the unsuccessful candidate, the person who is only nominated or declared by himself or by others to be a candidate on or after the day of the issue of the writ, or after the dissolution or vacancy."

And, where the charge is that a voter was retained and employed by the respondent for the purpose of the election, it is no answer to say that such employment took place before the respondent had been actually selected as a candidate. It would have been very dangerous not to have included this payment in his election expenses. (*Stepney case*, 1886, 4 O'M. & H. 38; cf. 35 & 36 Vict. c. 33 (The Ballot Act, 1872), s. 25.)

When a man begins to incur expenses with regard to an election, there is nothing to prevent his appointing an elec-

nominated
without
consent.

requires, any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate, on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued ;

(2.) Provided that where a person has been nominated as a candidate or declared to be a candidate by others, then—

- (a) If he was so nominated or declared without his consent, nothing in this Act shall be construed to impose any liability on such person, unless he has afterwards given his assent to such nomination or declaration or has been elected ; and
- (b) If he was so nominated or declared, either without his consent or in his absence and he takes no part in the election, he may, if he thinks fit, make the declaration respecting election expenses contained in the second part of the Second Schedule to this Act, and the election agent shall, so far as circumstances admit, comply with the provisions of this Act with respect to expenses

tion agent. In some cases, canvassers are set to work and committees formed long before the dissolution or issue of the writ. If those expenses are not to be returned as election expenses, the words of the Act as to the maximum amount of expenditure are set at naught. (*Rochester case*, 4 O'M. & H. 157.)

Evidence at any rate of what has passed before the dissolution is admissible ; and throws a very strong light on what takes place afterwards. (*Montgomery Boroughs case*, 4 O'M. & H. 169 ; and cf. *Aylesbury case*, *Id.* 62.)

incurred on account of or in respect of the conduct or management of the election in like manner as if the candidate had been nominated or declared with his consent.

64. In this Act, unless the context otherwise requires— General interpretation of terms.

The expression “election” means the election of a member or members to serve in Parliament :

The expression “election petition” means a petition presented in pursuance of the Parliamentary Elections Act, 1868, as amended by this Act : 31 & 32 Vict. c. 125.

The expression “election court” (z) means the judges presiding at the trial of an election petition, or, if the matter comes before the High Court, that court :

The expression “Election Commissioners” means commissioners appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same : 15 & 16 Vict. c. 57.

The expression “High Court” (a) means Her Majesty’s High Court of Justice in England :

The expressions “court of summary jurisdiction,” “petty sessional court,” and “Summary Jurisdiction Acts” have the same meaning as in the Summary Jurisdiction Act, 1879 : 42 & 43 Vict. c. 49.

The expression “the Attorney General” includes

(z) The Court which presides at an election now consists of two judges by the *Parliamentary Elections and Corrupt Practices Act*, 1879 (42 & 43 Vict. c. 75), s. 2.

(a) *Judicature Act*, 1873 (36 & 37 Vict. c. 66), s. 4.

the Solicitor General in cases where the office of the Attorney General is vacant or the Attorney General is interested or otherwise unable to act :
The expression "registration officer" means the clerk of the peace in a county, and the town clerk in a borough, as respectively defined by the enactments (*b*) relating to the registration of parliamentary electors :

The expression "elector" means any person whose name is for the time being on the register roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used :

The expression "register of electors" (*c*) means the said register roll or book :

The expression "polling agent" means an agent of the candidate appointed to attend at a polling station in pursuance of the Ballot Act, 1872, or of the Acts therein referred to or amending the same :

35 & 36
Vict. c. 33.

(*b*) See *The Parliamentary Registration Act*, 1843 (6 & 7 Vict. c. 18), s. 101, by which the words "clerk of the peace" comprehend and apply to any deputy or other person executing the duties of such "clerk of the peace," and the words "town clerk," except in regard to the cities of London and Southwark, extend to and mean any person executing the duties of "town clerk," or if in any city or borough there shall be no such officer as town clerk, then to any officer executing the same or like duties as usually devolve upon the "town clerk," or if in any city or borough there shall be no such person, then to the returning officer of such city or borough, or to such person as the returning officer might appoint for that purpose.

(*c*) "Register of electors." See *Parliamentary Registration Act*, 1843 (6 & 7 Vict. c. 18), s. 3, and following sections.

The expression "person" includes an association or body of persons (*d*), corporate or unincorporate, and where any act is done by any such association or body, the members of such association or body who have taken part in the commission of such act shall be liable to any fine or punishment imposed for the same by this Act:

The expression "committee room" shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room for the purposes of this Act by reason only of the candidate or any agent of the candidate addressing therein electors, committeemen, or others:

The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to Municipal Corporations or to the Poor Law, or under the Elementary Education Act, 1870, ^{33 & 34} or under the Public Health Act, 1875, or under ^{Vict. c. 75.} ^{38 & 39} any Acts amending the above-mentioned Acts, ^{Vict. c. 55} or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of

(*d*) With regard to "associations," &c., as *agents*, see note on the Parliamentary Law of AGENCY on p. 163.

a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above-mentioned, and includes any other municipal, or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly:

The expression "judicial office" includes the office of justice of the peace and revising barrister:

The expression "personal expenses" as used with respect to the expenditure of any candidate in relation to any election includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election:

The expression "indictment" includes information:

The expression "costs" includes costs, charges, and expenses:

The expression "payment" includes any pecuniary or other reward (*e*); and the expressions "pecuniary reward" and "money" shall be deemed to include any office, place, or employment, and

(*e*) Thus, refreshments may be payment. (*Barrow-in-Furness case*, 4 O'M. & H. 82.)

any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money shall be construed accordingly :

The expression “Licensing Acts” means the Licensing Acts, 1872 to 1874 :

Other expressions have the same meaning as in the Corrupt Practices Prevention Acts.

65. (1.) The enactments described in the Third Schedule to this Act are in this Act referred to as the Corrupt Practices Prevention Acts. Short titles.

(2.) The Acts mentioned in the Fourth Schedule to this Act are in this Act referred to and may be cited respectively by the short titles in that behalf in that schedule mentioned.

(3.) This Act may be cited as the Corrupt and Illegal Practices Prevention Act, 1883.

(4.) This Act and the Corrupt Practices Prevention Acts may be cited together as the Corrupt Practices Prevention Acts, 1854 to 1883.

66. The Acts set forth in the fifth Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, provided that this repeal or the expiration of any enactment not continued by this Act shall not revive any enactment which at the commencement of this Act is repealed, and shall not affect anything duly done or suffered before the commencement of this Act, or any right acquired or accrued or any incapacity incurred before the commencement of this Act, and any person subject to Repeal of Acts.

any incapacity under any enactment hereby repealed or not continued shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act.

Com-
mence-
ment of
Act.

67. This Act shall come into operation on the fifteenth day of October one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act.

Application of Act to Scotland.

Applica-
tion of
Act to
Scotland.

68. This Act shall apply to Scotland, with the following modifications:

(1.) The following expressions shall mean as follows:

The expression "misdemeanour" shall mean crime and offence:

The expression "indictment" shall include criminal letters:

The expression "solicitor" shall mean enrolled law agent:

The expression "revising barrister" shall mean sheriff:

The expression "barrister" shall mean advocate:

The expression "petty sessional court" shall mean sheriff court:

The expression "quarter sessions" shall mean the Court of Justiciary:

The expression "registration officer" shall mean an assessor under the enactments relating to the registration of parliamentary voters:

The expression "municipal borough" shall include

royal burgh and burgh of regality and burgh of barony :

The expression " Acts relating to municipal corporations " shall include the General Police and Improvement (Scotland) Act, 1862, and any other Act relating to the constitution and government of burghs in Scotland :

The expression " mayor " shall mean provost or chief magistrate :

The expression " alderman " shall mean bailie :

The expression " Summary Jurisdiction Acts " shall mean the Summary Jurisdiction (Scotland) Acts 1864 and 1881 (*f*) and any Acts amending the same.

(2.) The provisions of this Act with respect to polling districts and the expenses of dividing a county or borough into polling districts shall not apply to Scotland.

(3.) The provisions respecting the attendance at the trial of an election petition of a representative of the Director of public prosecutions shall not apply to Scotland, and in place thereof the following provisions shall have effect :

(a) At the trial of every election petition in Scotland Her Majesty's advocate shall be represented by one of his deputes or by the procurator-fiscal of the sheriff court of the district, who shall attend such trial as part of his official duty, and shall give all necessary assistance to the judge

(*f*) 27 & 28 Vict. c. 53, and 44 & 45 Vict. c. 33.

with respect to the citation of witnesses and recovery of documents :

- (b) If the judge shall grant a warrant for the apprehension, commitment, or citation of any person suspected of being guilty of a corrupt or illegal practice, the case shall be reported to Her Majesty's advocate in order that such person may be brought to trial before the High Court of Justiciary or the sheriff, according to the nature of the case :
- (c) It shall be the duty of the advocate depute or, in his absence, the procurator-fiscal, if it appears to him that a corrupt or illegal practice within the meaning of this Act has been committed by any person who has not received a certificate of indemnity, to report the case to Her Majesty's advocate in order to such person being brought to trial before the proper court, although no warrant may have been issued by the judge.

(4.) The jurisdiction of the High Court of Justice under this Act shall, in Scotland, be exercised by one of the Divisions of the Court of Session, or by a judge of the said court to whom the same may be remitted by such division, and subject to an appeal thereto, and the Court of Session shall have power to make Acts of sederunt for the purposes of this Act.

(5.) Court of Oyer and Terminer shall mean a circuit court of Justiciary, and the High Court of Justiciary shall have powers to make acts of adjournal regulating the procedure in appeals to the circuit court under this Act.

(6.) All offences under this Act punishable on

summary conviction may be prosecuted in the sheriff court in manner provided by the Summary Jurisdiction Acts, and all necessary jurisdictions are hereby conferred on sheriffs.

(7.) The authority given by this Act to the Director of public prosecutions in England shall in Scotland be exercised by Her Majesty's advocate, and the reference to the Prosecution of Offences Act, 1879, shall not apply.

(8.) The expression "Licensing Acts" shall mean ^{25 & 26} "the Public Houses Acts Amendment (Scotland) ^{Vict. c. 35.} Act, 1862," and "The Publicans' Certificates (Scotland) Act, 1876," and the Acts thereby amended ^{39 & 40} and therein recited. ^{Vict. c. 26.}

(9.) The expression "register of licences" shall mean the register kept in pursuance of section twelve of the Act of the ninth year of the reign of King George the Fourth, chapter fifty-eight.

(10.) The references to the Public Health Act, 1875, and to the Elementary Education Act, 1870, shall be construed to refer to the Public Health (Scotland) Act, 1867 (*g*), and to the Elementary Education (Scotland) Act, 1872 (*h*).

(11.) Any reference to the Parliamentary Elections Returning Officers Act, 1875, shall not apply.

(12.) The provision with respect to the registration officer sending the corrupt and illegal practices list to overseers and the dealing with such list by overseers shall not apply, and in lieu thereof it is hereby

(*g*) 30 & 31 Vict. c. 101.

(*h*) 35 & 36 Vict. c. 62.

enacted that the assessor shall in counties include the names of such persons in the list of persons who have become disqualified, and in boroughs shall omit the names of such persons from the list of persons entitled to vote.

(13.) The power given by this Act to the Lord Chancellor in England shall in Scotland except so far as relates to the justices of the peace be exercised by the Lord Justice General.

(14.) Any reference to the Attorney-General shall refer to the Lord Advocate.

(15.) The provisions with respect to the removal of cases to the Central Criminal Court or to the trial of cases at the Royal Courts of Justice shall not apply.

24 & 25
Vict. c. 83.

(16.) Section thirty-eight of the County Voters Registration (Scotland) Act, 1861, shall be substituted for section ninety-seven of the Parliamentary Registration Act, 1843, where reference is made to that section in this Act.

(17.) The provision of this Act with regard to costs shall not apply to Scotland, and instead thereof the following provision shall have effect :

The costs of petitions and other proceedings under "The Parliamentary Elections Act, 1868," and under this Act, shall, subject to any regulations which the Court of Session may make by act of sederunt, be taxed as nearly as possible according to the same principles as costs between agent and client are taxed in a cause in that court, and the auditor shall not allow any costs, charges, or expenses on a higher scale.

Application of Act to Ireland.

69. This Act shall apply to Ireland, with the following modifications: Applica-
tion of Act
to Ireland.

- (1.) No person shall be tried for any offence against this Act under any of the provisions of the Prevention of Crime (Ireland) Act, 1882. 45 & 46
Vict. c. 25.
- (2.) The expression "Summary Jurisdiction Acts" means, with reference to the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace and of the police in such district; and with reference to other parts of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Acts amending 14 & 15
Vict. c. 93. the said Act.
- (3.) Section one hundred and three of the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine, shall be substituted for section ninety-seven of the Parliamentary Registration Act, 1843 (*i*), where reference is made to that section in this Act.
- (4.) The provision with respect to the registration officer sending the corrupt and illegal practices list to overseers and the dealing with such list by overseers shall not apply, and in lieu thereof it is hereby enacted that the registration officer shall, after making out such list, himself publish the same in the manner in which he publishes

(*i*) 6 & 7 Vict. c. 18.

the lists referred to in the twenty-first and the thirty-third sections of the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine; and shall also in the case of every person in the corrupt and illegal practices list enter "objected to" against his name in the register and lists made out by such registration officer in like manner as he is by law required to do in other cases of disqualification.

- (5.) The Supreme Court of Judicature in Ireland shall be substituted for the Supreme Court of Judicature.
- (6.) The High Court of Justice in Ireland shall be substituted for the High Court of Justice in England.
- (7.) The Lord High Chancellor of Ireland shall be substituted for the Lord High Chancellor of Great Britain.
- (8.) The Attorney-General for Ireland shall be substituted for the Director of Public Prosecutions, and the reference to the prosecution of the Offences Act, 1879, shall not apply.
- (9.) The provisions of this Act relative to polling districts shall not apply to Ireland, but in the county of the town of Galway there shall be a polling station at Barna, and at such other places within the parliamentary borough of Galway as the town commissioners may appoint.
- (10.) Any reference to Part IV. of the Municipal Corporations Act, 1882, shall be construed to refer

to the Corrupt Practices (Municipal Elections) Act, 1872 (*k*).

(11.) Any reference to the Licensing Acts shall be construed to refer to the Licensing Acts (Ireland), 1872-1874 (*l*).

(12.) The Public Health (Ireland) Act, 1878 shall be substituted for the Public Health Act, 1875. ^{41 & 42} Vict. c. 52.

(13.) The provisions with respect to the removal of cases to the Central Criminal Court, or to the trial of cases at the Royal Courts of Justice, shall not apply to Ireland.

Continuance.

70. This Act shall continue in force until the thirty-first day of December one thousand eight hundred and eighty-four, and no longer, unless continued by Parliament (*m*); and such of the Corrupt Practices Prevention Acts as are referred to in Part One of the Third Schedule to this Act shall continue in force until the same day, and no longer, unless continued by Parliament. ^{Continuance.}

(*k*) 35 & 36 Vict. c. 60.

(*l*) 35 & 36 Vict. c. 94, and 37 & 38 Vict. c. 69.

(*m*) The Act has been continued by Parliament from year to year by the *Expiring Laws Continuance Acts*, 1884—1893 (47 & 48 Vict. c. 53; 56 & 57 Vict. c. 51).

SCHEDULES.

FIRST SCHEDULE.

PART I.

Persons Legally Employed for Payment.

(1.) One election agent and no more.

(2.) In counties one deputy election agent (in this Act referred to as a sub-agent) to act within each polling district and no more.

(3.) One polling agent in each polling station and no more.

(4.) In a borough one clerk (*n*) and one messenger, or if the number of electors in the borough exceeds five hundred, a number of clerks and messengers not exceeding in number one clerk and one messenger for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred.

(5.) In a county for the central committee room one clerk and one messenger, or if the number of electors in the county exceeds five thousand, then a number of

(*n*) Where the election agent was a solicitor, and he employed one of his regular clerks, paying him no additional salary, for work in connection with the election, the Court said that he was not a clerk within the meaning of this schedule. (*Buckrose case*, 4 O'M. & H. 116.)

clerks and messengers not exceeding in number one clerk and one messenger for every complete five thousand electors in the county; and if there is a number of electors over and above any complete five thousand or complete five thousands of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five thousand.

(6.) In a county a number of clerks and messengers not exceeding in number one clerk and one messenger for each polling district in the county, or where the number of electors in a polling district exceeds five hundred one clerk and one messenger for every complete five hundred electors in the polling district, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred: Provided always, that the number of clerks and messengers so allowed in any county may be employed in any polling district where their services may be required.

(7.) Any such paid election agent, sub-agent, polling agent, clerk, and messenger may or may not be an elector but may not vote (*o*).

(8.) In the case of the boroughs of East Retford,

(*o*) A vote will be struck off if the children of the voter are employed and paid as messengers by the candidate. (*Stepney case*, 1886, 4 O'M. & IL. 39.)

Where M. voluntarily undertook the duties of a sub-agent without any payment or reward, or promise of payment or reward, and when he voted he believed he would receive none, but after the election was over the election agent, finding that he had a surplus, paid him the sum of 26*l.* as an honorarium, and five guineas for the use of his office, and M. did not tell him he had voted, this was held to be an illegal practice under sect. 9. (*S. W. Essex case*, 2 T. L. R. 388.)

Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of this part of this schedule shall apply as if such borough were a county.

PART II.

Legal Expenses in Addition to Expenses under Part I.

(1.) Sums paid to the returning officer for his charges not exceeding the amount authorized by the Act 38 & 39 Vict. c. 84.

(2.) The personal expenses of the candidate.

(3.) The expenses of printing, the expenses of advertising, and the expenses of publishing, issuing, and distributing addresses and notices (*p*).

(*p*) In the *Stepney case*, 1886, 4 O'M. & H. 52, about twenty men were employed by the candidate's agent to distribute on the polling day, in the neighbourhood of the polling-stations, handbills twelve inches long by eight inches broad, headed "Stepney Election. Facts worth remembering at the poll." Six paragraphs followed about Mr. Isaacson's qualifications for election, concluding thus:—"Mr. Isaacson will be the winner if his friends will poll early and mark their voting papers thus." Then followed a copy of the ballot paper, with Mr. Isaacson's name in very large letters, and his opponent's name in very small letters. There was a X after Mr. Isaacson's name. It was held by Denman, J.—dubitans, Field, J.—that these men were not employed to "distribute addresses or notices" within the meaning of the schedule. But Field, J., would not therefore hold that an illegal employment or payment under sect. 17 had been committed; but looking at other parts of the Act, as sect. 18, he put a broader construction on the Act, and held that there was no illegal practice. Denman, J., held that there was illegal employment and payment, but condoned it under sect. 23. The Court agreed in the condemnation of any such practice as the endeavouring to mislead voters by giving them directions intended to mislead them.

But where it was proved that persons had been paid for the distribution of certain documents relating to the respondent's candidature at the election, including a letter from a

(4.) The expenses of stationery, messages, postage, and telegrams.

(5.) The expenses of holding public meetings.

(6.) In a borough the expenses of one committee room, and if the number of electors in the borough exceeds five hundred, then of a number of committee rooms not exceeding the number of one committee room for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then of one committee room for such number, although not amounting to a complete five hundred.

(7.) In a county the expenses of a central committee room, and in addition of a number of committee rooms not exceeding in number one committee room for each polling district in the county, and where the number of electors in a polling district exceeds five hundred one additional committee room may be hired for every complete five hundred electors in such polling district over and above the first five hundred.

statesman giving reasons why he could not come, and so forth, the Court held there was no illegal employment or payment under this section, but that such things come fairly within the meaning of "addresses and notices." Offensive pictures and statements might be otherwise. The Court, however, has in general nothing to do with the contents of the documents. (*Barrow-in-Furness case*, 4 O'M. & H. 78.) As to bills, placards, and posters, these are not mentioned in the schedule; but it is lawful to employ an advertisement contractor to exhibit a bill. See sect. 7(3). "And therefore," says Field, J., in the same case, "it must be equally lawful to take the bill to be exhibited, and it cannot be exhibited until it is printed, and it must be posted up, and the labour of doing all that involves an expense which must be borne by the candidate."

PART III.

Maximum for Miscellaneous Matters.

Expenses in respect of miscellaneous matters other than those mentioned in Part I. and Part II. of this schedule not exceeding in the whole the maximum amount of two hundred pounds, so nevertheless that such expenses are not incurred in respect of any matter or in any manner constituting an offence under this or any other Act, or in respect of any matter or thing, payment for which is expressly prohibited by this or any other Act.

PART IV.

Maximum Scale.

(1.) In a borough the expenses mentioned above in Parts I., II., and III. of this schedule, other than personal expenses and sums paid to the returning officer for his charges, shall not exceed in the whole the maximum amount in the scale following:

If the number of electors on	
the register—	The maximum amount shall be—
Does not exceed 2,000 ...	350 <i>l</i> .
Exceeds 2,000	380 <i>l</i> ., and an additional 30 <i>l</i> . for
	every complete 1,000 electors
	above 2,000.
Provided that in Ireland if the number	
of electors on the register—	The maximum amount shall be—
Does not exceed 500	200 <i>l</i> .
Exceeds 500, but does not	
exceed 1,000.....	250 <i>l</i> .
Exceeds 1,000, but does	
not exceed 1,500	275 <i>l</i> .

(2.) In a county the expenses mentioned above in Parts I., II., and III. of this schedule, other than personal expenses and sums paid to the returning officer for his charges, shall not exceed in the whole the maximum amount in the scale following :

If the number of electors on
the register—

The maximum amount shall be—

Does not exceed 2,000 ... 650*l.* in England and Scotland,
and 500*l.* in Ireland.

Exceeds 2,000 710*l.* in England and Scotland,
and 540*l.* in Ireland; and an
additional 60*l.* in England and
Scotland, and 40*l.* in Ireland,
for every complete 1,000 elec-
tors above 2,000.

PART V.

General.

(1.) In the case of the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of Parts II., III., and IV. of this schedule shall apply as if such borough were a county.

(2.) For the purposes of this schedule the number of electors shall be taken according to the enumeration of the electors in the register of electors.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses mentioned in Parts III. and IV. of this schedule shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third.

(4.) Where the same election agent is appointed by or on behalf of two or more candidates at an election, or where two or more candidates, by themselves or any

agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same sub-agents, clerks, messengers, or polling agents at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election.

Provided that—

- (a) The employment and use of the same committee room, sub-agent, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates.
- (b) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates.
- (c) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate and his election agent may be relieved accordingly from the consequences of having incurred such excess of expenses.

SECOND SCHEDULE.

PART I.

FORM OF DECLARATIONS AS TO EXPENSES.

Form for Candidate.

I , having been a candidate at the election for the county [*or borough*] of on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses [about to be] transmitted by my election agent [*or if the candidate is his own election agent, "by me"*] to the returning officer at the said election, a copy of which is now shown to me and marked , and to the best of my knowledge and belief that return is correct ;

And I further solemnly and sincerely declare that, except as appears from that return, I have not, and to the best of my knowledge and belief no person, nor any club, society, or association, has, on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election ;

And I further solemnly and sincerely declare that I have paid to my election agent [*if the candidate is also his own election agent, leave out "to my election agent"*] the sum of pounds and no more for the purpose of the said election, and that, except as specified in the said return, no money, security, or equivalent for money has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of my election agent [*or if the candidate is his own election agent, "myself"*] or any other person for the purpose of defraying

any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election ;

And I further solemnly and sincerely declare that I will not, except so far as I may be permitted by law, at any future time make or be party to the making or giving of, any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant,

C.D.

Signed and declared by the above-named declarant on the day of , before me.

(Signed) *E.F.*

Justice of the Peace for .

Form for Election Agent.

I, , being election agent to ; candidate at the election for the county [*or borough*] of , on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses about to be transmitted by me to the returning officer at the said election, and now shown to me and marked , and to the best of my knowledge and belief that return is correct ;

And I hereby further solemnly and sincerely declare that, except as appears from that return, I have not and to the best of my knowledge and belief no other person, nor any club, society, or association has on behalf of the said candidate made any payment, or given, promised, or offered any reward, office, employment, or valuable

consideration, or incurred any liability on account of or in respect of the conduct or management of the said election ;

And I further solemnly and sincerely declare that I have received from the said candidate pounds and no more [*or nothing*] for the purpose of the said election, and that, except as specified in the said return sent by me, no money, security, or equivalent for money has been paid, advanced, given, or deposited by anyone to me or in my hands, or, to the best of my knowledge and belief, to or in the hands of any other person for the purpose of defraying any expenses incurred on behalf of the said candidate on account of, or in respect of the conduct or management of the said election.

Signature of declarant, *A.B.*

Signed and declared by the above-named declarant on the day of before me.

(Signed) *E.F.*

Justice of the Peace for .

FORM OF RETURN OF ELECTION EXPENSES (*q*).

I, *A.B.*, being election agent to *C.D.*, candidate at the election for the county [*or borough*] of on the day of , make the following return respecting election expenses of the said candidate at the said election [*or where the candidate has named himself as election agent*, "I, *C.D.*, candidate at the election for

(*q*) No section in the Act makes all payments except those in this schedule illegal. Therefore, where a voter was paid five shillings for the loss of a hat at a public meeting, and the return of election expenses showed the payment in specific terms, the Court refused to hold the payment illegal, and the vote stood. (*Stepney case*, 1886, 4 O'M. & H. 39.)

“ the county [*or borough*] of on the day
 “ of , acting as my own election agent, make the
 “ following return respecting my election expenses at
 “ the said election ”].

Receipts.

Received of [<i>the above-named candidate</i>] [<i>or</i>]	}	£
<i>where the candidate is his own election agent,</i>		
“ Paid by me ”] - - - -		
Received of J.K. - - - -		£

[*Here set out the name and description of every person (r), club, society, or association, whether the candidate or not, from whom any money, securities, or equivalent of money was received in respect of expenses incurred on account of or in connexion with or incidental to the above election, and the amount received from each person, club, society, or association separately.*]

Expenditure.

Paid to E.F., the returning officer for the said	}	£
county [<i>or borough</i>] for his charges at the		
said election - - - - -		

(r) Where there was an omission of these through inadvertence, Pollock, B., said:—“The requirements of the schedule are of the greatest importance to carry out the object and intention of the Act, viz., that the other side in the election and the public at large should be properly informed, in respect of every payment which is made, whether it be of one kind or the other.” There was therefore a *prima facie* case of illegal practice under sect. 33 (6). But the Court excused it under sect. 34, having regard to the fact that there was nothing in the general account of a suspicious character, and to the fact that the Court were satisfied that there had been not only no money misspent, but that there had been no intention in passing this account to mislead anybody in this important particular. (*Buckrose case*, 4 O’M. & H. 119.)

Personal expenses of the said <i>C.D.</i> , paid by	
himself [<i>or if the candidate is his own election agent, "Paid by me as candidate"</i>]	£
Do. do. paid by me [<i>or if the candidate is his own election agent, add "acting as election agent"</i>]	£
Received by me for my services as election agent at the said election [<i>or if the candidate is his own election agent, leave out this item</i>]	£
Paid to <i>G.H.</i> as sub-agent of the polling district of	£

[*The name and description of each sub-agent and the sum paid to him must be set out separately.*]

Paid to	as polling agent	-	£
Paid to	as clerk for	days services	£
Paid to	as messenger for	days services	£

[*The names and descriptions(s) of every polling agent, clerk, and messenger, and the sum paid to each, must be set out separately either in the account or in a separate list annexed to and referred to in the account, thus, "Paid to polling agent (or as the case may be) as per annexed list £ ."*]

Paid to the following persons in respect of goods supplied or work and labour done :

To <i>P.Q.</i> (printing)	-	-	£
To <i>M.N.</i> (advertising)	-	-	£
To <i>R.S.</i> (stationery)	-	-	£

[*The name and description of each person, and the nature of the goods supplied, or the work*

(s) A description must be given which would involve that by which they would be known, identified and distinguished from other persons. Obviously, therefore, their address and business should be given. (*Norwich case*, 4 O'M. & H. 91.)

and labour done by each, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

Paid for postage	.	-	-	-	£
------------------	---	---	---	---	---

Paid for telegrams	-	-	-	-	£
--------------------	---	---	---	---	---

Paid for the hire of rooms as follows :—

For holding public meetings		-	-	-	£
-----------------------------	--	---	---	---	---

For committee rooms	-	-	-	-	£
---------------------	---	---	---	---	---

[A room hired for a public meeting or for a committee room must be named or described so as to identify it; and the name and description of every person to whom any payment was made for each such room, together with the amount paid, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

Paid for miscellaneous matters, namely—	-	-	-	-	£
---	---	---	---	---	---

[The name and description of each person to whom any sum is paid, and the reason for which it was paid to him, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

In addition to the above, I am aware, as election agent for *C.D.*, [or if the candidate is his own election agent, leave out “as election agent for *C.D.*”] of the following disputed and unpaid claims; namely,—

Disputed claims.

By <i>T.U.</i> for	-	-	-	-	£
--------------------	---	---	---	---	---

[Here set out the name and description of each person whose claim is disputed, the amount of the claim, and the goods, work, or other matter on the ground of which the claim is based.]

Unpaid claims allowed by the High Court to be paid after the proper time or in respect of which application has been or is about to be made to the High Court.

By M.O. for - - - - - £

[*Here state the name and description of each person to whom any such claim is due, and the amount of the claim, and the goods, work, and labour or other matter on account of which the claim is due.*]

(Signed) A.B.

PART II.

FORM OF DECLARATION AS TO EXPENSES.

Form for candidate where declared a candidate or nominated in his absence and taking no part in the election.

I, , having been nominated [*or having been declared by others*] in my absence [*to be*] a candidate at the election for the county or borough of held on the day of , do hereby solemnly and sincerely declare that I have taken no part whatever in the said election.

And I further solemnly and sincerely declare that [*or with the exception of*] I have not, and no person, club, society, or association at my expense has, made any payment or given, promised, or offered, any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that [*or with the exception of*] I have not paid any money

or given any security or equivalent for money to the person acting as my election agent at the said election, or to any other person, club, society, or association on account of or in respect of the conduct or management of the said election, and that [*or with the exception of*

] I am entirely ignorant of any money security or equivalent for money having been paid, advanced, given, or deposited by any one for the purpose of defraying any expenses incurred on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not, except so far as I may be permitted by law, at any future time make or be party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be party to the providing of any money, security, or equivalent of money for the purpose of defraying any such expenses.

Signature of declarant, C.D.

Signed and declared by the above-named declarant
on the day of , before me,

(Signed) *E.F.*

Justice of the Peace for

THIRD SCHEDULE.

Corrupt Practices Prevention Acts.

Session and Chapter.	Title of Act.	Enactments referred to as being the Corrupt Practices Prevention Acts.
<p>PART I.</p> <p><i>Temporary.</i></p>		
17 & 18 Vict. c. 102.	The Corrupt Practices Prevention Act, 1854.	The whole Act so far as unrepealed.
26 ⁿ & 27 Vict. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The whole Act so far as unrepealed.
31 & 32 Vict. c. 125.	The Parliamentary Elections Act, 1868.	The whole Act so far as unrepealed.
35 & 36 Vict. c. 33.	The Ballot Act, 1872	Part III. so far as unrepealed.
42 & 43 Vict. c. 75.	The Parliamentary Elections and Corrupt Practices Act, 1879.	The whole Act so far as unrepealed.
<p>PART II.</p> <p><i>Permanent.</i></p>		
30 & 31 Vict. c. 102.	The Representation of the People Act, 1867.	Sects. 11, 49, 50.
31 & 32 Vict. c. 48.	The Representation of the People (Scotland) Act, 1868.	Sects. 8, 49.
31 & 32 Vict. c. 49.	The Representation of the People (Ireland) Act, 1868.	Sects. 8, 13.
44 & 45 Vict. c. 40.	The Universities Elections Amendment (Scotland) Act, 1881.	Sub-s. 17 of sect. 2.

PART III. (t).

Enactments defining the Offences of Bribery and Personation.

The Corrupt Practices Prevention Act, 1854, 17 & 18
Vict. c. 102. ss. 2, 3.

Bribery
defined.

s. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:—

- (1.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election:

(t) The Corrupt Practices Prevention Act, 1883, adds nothing to the law of bribery and personation, except that—while defining “corrupt practice” under the Act in sect. 3—it incorporates these definitions of bribery and personation from earlier Acts. The subjects of bribery and personation are not therefore proper to this book. The cases explaining the definition of bribery in sects. 2 and 3 of the Corrupt Practices Prevention Act, 1854, are collected in Rogers on Elections, 16th ed., vol. 2, p. 302, and are principally these:—*Dover case*, Wolferstan & Bristowe, 127; *Lambeth case*, Wolferstan & Dew, 129; *Preston case*, Wolferstan & Bristowe, 74; *Coventry case*, 1 O.M. & H. 102; *Bradford case*, 1 O.M. & H. 32; *Bristol case*, sub tit.; *Britt v. Robinson*, L. R. 5 C. P. 503; *Rye case*, 3 Power, Rodwell & Dew, 122; *Belfast case*, 1 O.M. & H. 285; *Oldham case*, 1 O.M. & H. 162; *Mallow case*, 2 O.M. & H. 21. Cf. also Parker’s Powers, Duties and Liabilities of an Election Agent, 2nd ed., pp. 380—404.

(2.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election :

(3.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election. Provided always, that the aforesaid enactment shall not extend or be construed to

extend to any money paid or agreed to be paid for or on account of any legal expenses bonâ fide incurred at or concerning any election.

Bribery
further
defined.

s. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election:

(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867, 30 & 31
Vict. c. 102. s. 49 (*u*).

Corrupt
payment
of rates to
be punish-
able as
bribery.

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and

(*u*) See *Beverley case*, 1 O'M. & H. 145; *Oldham case*, 1 O'M. & H. 164; *Taunton case*, 1 O'M. & H. 183; *Hastings case*, 1 O'M. & H. 219; *Cheltenham case*, 1 O'M. & H. 63; *Wigan case*, 1869, 1 O'M. & H. 190; Rogers on Elections, 16th ed., vol. 2, pp. 292—306.

any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

The Representation of the People (Scotland) Act, 1868,
31 & 32 Vict. c. 48, s. 49.

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section mentioned is made shall also be guilty of bribery, and punishable accordingly.

The Universities Elections Amendment (Scotland) Act,
1881, 44 & 45 Vict. c. 40, s. 2.

17. Any person, either directly or indirectly, corruptly paying any fee for the purpose of enabling any person to be registered as a member of the general council, and thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying such fee on behalf of any person for the

Corrupt
payment
of rates to
be punish-
able as
bribery.

Corrupt
payment
of regis-
tration fee
to be pun-
ishable as
bribery.

purpose of inducing him to vote or to refrain from voting, shall be guilty of bribery, and shall be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section mentioned is made, shall also be guilty of bribery, and punishable accordingly.

The Ballot Act, 1872, 35 & 36 Vict. c. 33, s. 24 (x).

Personation defined.

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

FOURTH SCHEDULE.

Short Titles.

Session and Chapter.	Long Title.	Short Title.
15 & 16 Vict. c. 57.	An Act to provide for more effectual inquiry into the existence of corrupt practices at the election of members to serve in Parliament.	Election Commissioners Act, 1852.
26 & 27 Vict. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The Corrupt Practices Prevention Act, 1863.

(x) See *Stepney case*, 1886, 4 O'M. & H. 43; Rogers on Elections, 16th ed., vol. 2, pp. 146—152; Parker's Powers, Duties and Liabilities of an Election Agent, 2nd ed., pp. 434—336.

FIFTH SCHEDULE.

Enactments Repealed.

NOTE.—Portions of Acts which have already been specifically repealed are in some instances included in the repeal in this Schedule in order to preclude henceforth the necessity of looking back to previous Acts.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
60 Geo. 3 & 1 Geo. 4, c. 11.	An Act for the better regulation of polls, and for making further provision touching the election of members to serve in Parliament for Ireland.	Sect. 36.
1 & 2 Geo. 4, c. 58.	An Act to regulate the expenses of election of members to serve in Parliament for Ireland.	The whole Act except sect. 3.
4 Geo. 4, c. 55	An Act to consolidate and amend the several Acts now in force so far as the same relate to the election and return of members to serve in Parliament for the counties of cities and counties of towns in Ireland.	Sect. 82.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
17 & 18 Vict. c. 102.	The Corrupt Practices Prevention Act, 1854.	Sect. 1. Sect. 2 from "and any person so offending" to "with full costs of suit." Sect. 3 from "and any person so offending" to the end of the section. Sects. 4, 5, 6. Sect. 7 from "and all payments" to the end of the section. Sects. 9, 14, 23, 36. Sect. 38 from "and the words personal expenses" to the end of the section; and sect. 39 and Schedule A.
21 & 22 Vict. c. 87.	An Act to continue and amend the Corrupt Practices Prevention Act, 1854.	The whole Act.
26 & 27 Vict. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The whole Act except sect. 6.
30 & 31 Vict. c. 102.	The Representation of the People Act, 1867.	Sect. 34 from "and in other boroughs the justices" to "greater part thereof is situate;" and sect. 36.
31 & 32 Vict. c. 48.	The Representation of the People (Scotland) Act, 1868.	Sect. 25.
31 & 32 Vict. c. 49.	The Representation of the People (Ireland) Act, 1868.	Sect. 12.
31 & 32 Vict. c. 58.	The Parliamentary Electors Registration Act, 1868.	Sect. 18 from "the power of dividing their county" to the end of the section.
31 & 32 Vict. c. 125.	The Parliamentary Elections Act, 1868.	So much of sect. 3 as relates to the definitions of "candidate." Sects. 16, 33, 36. Sect. 41 from "but according to the same principles" to "the High Court of Chancery." Sects. 43, 45, 46, 47. Sect. 58 from "the principles" down to "in the court of session," being sub-s. 16.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
35 & 36 Vict. c. 33.	The Ballot Act, 1872	Sect. 5 from the beginning down to "one hundred registered electors." Sect. 24 from "The offence of personation or of aiding" to "hard labour," and from "The offence of personation shall be deemed to be" to the end of the section.
42 & 43 Vict. c. 75.	The Parliamentary Elections and Corrupt Practices Act, 1879.	Sect. 3, and Schedule.
43 Vict. c. 18..	The Parliamentary Elections and Corrupt Practices Act, 1880.	The whole Act except sects. 1, 3.

NOTE

ON THE

PARLIAMENTARY LAW AS TO AGENCY.

A MEMBER of Parliament loses his seat under this Act if he has been guilty of corrupt or illegal practices by *agents*. (Sects. 5, 11.) It is, therefore, of great importance to see what is the parliamentary common law as to agency, for the law of agency which would vitiate an election is a peculiar law of agency—utterly different, for instance, from that which would subject a candidate to a penalty or an indictment. (*Norwich case* (1869), 1 O'M. & H. 10.)

Principle of the Parliamentary Law as to Agents.—The principle is well summed up in the maxim, “NEMO CORONABITUR QUI NON LEGITIME CERTAVERIT.” The position of a candidate at an election is like that of a yacht-owner in a race. When the owner goes aboard and finds captain and crew there, the very fact that he consents to sail with them makes them perforce his agents for the purpose of sailing the race in accordance with the laws of the course. And so, where the steersman aboard one yacht thwarts his opponent by declining to give way to the vessel that had a right to keep her wind, or where one of the crew hoists a sail not allowed by the rules of the

race, the owner of that yacht is disallowed the prize. This illustration has been frequently approved. (See *Westbury case*, 1 O'M. & H. 55; *Tamworth case*, *id.* 81; *Coventry case*, *id.* 107; *Blackburn case*, *id.* 202; *Wigan case* (1881), 4 O'M. & H. 11.)

Lord Barcaple, in the *Greenock case* (1 O'M. & H. 251), distinguished three classes of cases:—(1) criminal cases, in which the prisoner must be proved personally guilty; (2) civil cases, in which it is enough if the offence is caused by the person employed by the defendant doing the thing he is employed to do; (3) election petitions, where, it being proved that a candidate is having his election carried on by a committee or certain canvassers, those canvassers do something which, if the candidate is responsible for it, will invalidate the election; and it is held that he is responsible for it in the sense of making the election depend upon it. This statement of the law was approved by Blackburn, J., in the *North Norfolk case*, 1 O'M. & H. 241.

What has to be proved to constitute agency for this purpose is that the person in question has been entrusted in some way or other by the candidate with some material part of the business of the election, which is performed, or which is supposed to be performed, by the candidate himself. (*Dungannon case*, 3 O'M. & H. 101; cf. *Wakefield case*, 2 O'M. & H. 102; *Aylesbury case*, 4 O'M. & H. 62.)

In such a case the candidate is responsible for the act of an agent, though he himself not only did not intend or authorise it, but even *bonâ fide* did his best to hinder it. (*Taunton case*, 1 O'M. & H. 182; *Barnstaple case*, 2 O'M. & H. 105.)

The relation is, therefore, more on the principle of

master and servant than on that of principal and agent in the ordinary common law. (See *Norwich case* (1869), 1 O'M. & H. 11; *Westminster case*, *id.* 95; *Aylesbury case*, 4 O'M. & H. 62.)

Agency is a result of law to be drawn from the facts in the case and from the acts of individuals; as Keogh, J., said, in the *Sligo case* (1 O'M. & H. 301, 302), "It is not by what the principal tells me that he intends to do that I am to construe the question of agency. It is *not what he intended, but what authority he gave*, and did the acts of the person so authorised naturally flow from the authority so given? A wherryman may look one way," he significantly added, "while he rows the other."

So, where the respondent intended generally a distribution of coals to the poor as a charitable gift, and with a view of making himself popular, but in the hands of those who acted for him it was made an agency for getting votes for him, this was held to be a corrupt act, for which the respondent was responsible, and he was unseated. (*Boston case*, 2 O'M. & H. 166.)

But, on the other hand, mere non-interference with persons, who, feeling interested in the success of the candidate, may act in support of his canvass, is not enough to saddle the candidate with any unlawful act of theirs, of which the tribunal is satisfied that he or his authorised agent is ignorant. (*Wigan case* (1869), 1 O'M. & H. 192.)

It is clear that a man's merely acting is not enough; he must act in promotion of the election, and he must have authority, or there must be circumstances from which it can be inferred. Where D. canvassed three times a week, though he had no regular canvass book, attended continually at the committee room, was bringing up voters to

the poll all the poll-day, and was employed as to the petition afterwards, there, although the respondent had said: "I cannot employ you as an agent," yet others working side by side with the respondent did employ him, he was held to be an agent. (*Stroud case* (Nov. 1874), 3 O'M. & H. 11.)

In such cases as these it is a question for the Court whether, upon the aggregate of all these things taken together, of which each in itself is little—though some—evidence, the person is shown to have been employed to such an extent as to make him, *upon the common sense broad view of it*, an agent for whom the candidate would be responsible. (*Bewdley case*, 1 O'M. & H. 18; cf. also *Staleybridge case*, *id.* 70; *Wakefield case*, 2 O'M. & H. 102; *Tewkesbury case*, 3 O'M. & H. 99; *Bridgewater case*, 1 O'M. & H. 115; *Taunton case*, *id.* 186; *Hereford case*, *id.* 195.)

But, where the honesty of the candidate is shown, he will not be unseated unless the corrupt act of his agent is shown to the entire satisfaction of the Court. (*Wigan case* (1869), 1 O'M. & H. 192.)

Again, an isolated act of bribery by an agent must be very clearly proved; because in such a case, though it is admitted that there is no logical reason why it should be so, more evidence is required to satisfy one of the agency. (*Hastings case*, 1 O'M. & H. 219; cf. *Westminster case*, *Id.* 95.)

Such, in general, is the principle on which agency is determined in these cases. The Court has refused to frame any exact definition of such agency. (See *Bridgewater case*, 1 O'M. & H. 115; *Taunton case*, 2 O'M. & H. 74.) The principle is grounded on the just requirement that the

candidate must not take the benefit of the services of the individual and repudiate them at the same time. (*Barnstaple case*, 2 O'M. & H. 105; *Greenock case*, 1 O'M. & H. 251; *Staleybridge case*, Id. 68.)

Degrees of Agency.—There may, however, be degrees of agency. As you go lower down you require more distinctly to show that the act was done by a person for whom the candidate would be responsible. (*Hereford case*, 1 O'M. & H. 195.) Besides this, it must be noted that a man may be an agent for limited purposes; and such an one makes the candidate liable to that limited extent. (*Westbury case*, 1 O'M. & H. 48; *N. Norfolk case*, 1 O'M. & H. 237; *Bodmin case*, Id. 120.)

Sub-agents.—If an agent, though he be no agent of the candidate, be employed by the agent of the candidate, he is a sort of subordinate agent; and, if he is employed by persons who have authority to employ people to further the election of a particular individual, and in the course of such canvassing makes use of a threat or promise, such an act will make the candidate liable, however innocent the candidate may be and however careful. (*Barnstaple case*, 2 O'M. & H. 105.)

Thus, where one of the respondent's principal agents authorized S. to go to Penzance and bring up any Plymouth voter he could find, and S. found W., who declined to come unless a substitute was paid to do his share in certain fishing during his absence, and S. did this, the election was avoided in consequence. (*Plymouth case*, 3 O'M. & H. 108.)

And where a huge sum was paid by the respondent to P. for election expenses, P.'s agent was held to be the respondent's agent. (*Bewdley case*, 1 O'M. & H. 19.)

A candidate was held responsible, in the *Cashel case* (1 O'M. & H. 288), for the act of the wife of an agent; for an agent, it was said, may work through an instrument.

But where H. was an agent, it was held that his son was not. Martin, B., said:—"Although young H. seems to have been active with regard to the election, I cannot hold that an act done by him, because his father was a person for whom the respondent would be responsible, would make young H. one also." (*Westminster case*, 1 O'M. & H. 96.)

Nor can the partner of a paid agent be held constructively liable for having committed a misdemeanour. (*Mallow case*, 2 O'M. & H. 21.)

Particular Things from which Agency may sometimes be inferred.—I. Canvassing.—Canvassing by procurement (whether expressly or impliedly, whether by words or actions it is immaterial) of the respondent creates agency. (*Westbury case*, 1 O'M. & H. 55; cf. *Wigan case* (1881), 4 O'M. & H. 13.)

Any person *authorized* to canvass is an agent; and it does not matter whether he has been forbidden to bribe or not. (*Norwich case* (1869), 1 O'M. & H. 11; cf. also *Lichfield case*, 1 O'M. & H. 25, 26.)

But agency is not established by merely showing that a particular person has gone about with the candidate and has canvassed. Canvassing will only afford premises from which a judge, discharging the functions of a jury, may

conclude that agency is established. (*Shrewsbury case*, 2 O'M. & H. 36; cf. *Teukesbury case*, 3 O'M. & H. 98; *Salisbury case* (1883), 4 O'M. & H. 21.)

The fact that a man has a canvassing-book is only a step in the evidence that he is a canvasser authorized by candidate's agents. You must prove his authority; *e.g.*, by showing that he was in company with one of the principal agents, who saw him canvassing, or was present when he was canvassing. (*Bolton case*, 2 O'M. & H. 140, 141.)

Introducing candidates to voters, whom the said candidates then and there canvassed, is not conclusive evidence of agency. For taking a man to point out voters and to influence them in the candidate's presence is not conclusive evidence of an employment of that person to go behind the candidate's back and bribe them. (*Salisbury case* (1880), 3 O'M. & H. 132.)

Where the respondent determined and made known his determination to those who were *primâ facie* his agents that his canvass should be a personal one, and such persons conducted him to the voters' houses, but left him to deal with the voters himself, these were held not to be his agents. (*Harwich case*, 3 O'M. & H. 69.)

For a definition of "canvassing," see *Westbury case* (1 O'M. & H. 56), where it is said:—"Canvassing may be either by asking a man to vote for the candidate for whom you are canvassing, or by begging him not to go to the poll, but to remain neutral, and not to vote for the adversary."

—II. Being on the Committee.—Members of a committee, to whom written "instructions" had been sent by the

respondent's conducting agents, were held to be capable to the fullest extent of making the respondent liable for the parliamentary consequences of their acts. (*Dublin case*, 1 O'M. & H. 273. See also *Huddersfield case*, 2 Power, Rodwell & Dew, 128.)

Being on the committee is one of the circumstances, several of which go cumulatively, to prove agency. (See *Stroud case* (Nov. 1874), 3 O'M. & H. 11, above cited.)

So, where D. was limited to a district, attended the respondent's committee twenty times, was present at the local committee, and on the day of the bribery was busy in getting up voters who required particular attention, that was enough, if he was to use anything like solicitation or persuasion to them. (*Durham case*, 2 O'M. & H. 136.)

Again, where it was proved that the respondent was vice-president of a society, that he spoke at its meetings, that many of its members were to his knowledge active partisans of his, and actively canvassing for him, that there were certain rooms belonging to the society which might in one sense be called committee-rooms (though they were not such in the old sense of being occupied by a certain fixed committee), that they were placarded with the respondent's name, and that at them business in connection with the election was transacted, it was held that the respondent would be liable for what these persons did—provided that he or his authorized agents had reasonable knowledge that those persons were acting in a certain manner and with a certain object. (*Wakefield case*, 2 O'M. & H. 102, 103.)

And where S. was an active politician, proved to be in a committee-room, and coming out of it with a body of

others, and that body separated into three or four parties, canvassing three or four districts, canvassing with canvass-books, and where the respondent was in the immediate neighbourhood of the place where the offence was committed, the Court held S. to be an agent. (*Teckesbury case*, 3 O'M. & H. 98, 99.)

But, where D.'s name was in a list of a committee for promoting the respondent's election, consisting of six hundred persons, he was held not to be an agent. The committee-man for which the respondent would be responsible is a committee-man in the ordinary intelligible sense of the word, *i.e.*, a person in whom faith is put by the candidate, and for whose acts he is, therefore, responsible. (*Westminster case*, 1 O'M. & H. 92.)

So, again, where it was not proved who put P. on the committee, how he got there, what his duties were, or what he did; but his own statement was, that he understood his duties were to do the best he could for the respondent; the respondent was not responsible for P. having offered to pay a voter's expenses to come and vote. (*Windsor case*, 2 O'M. & H. 89.)

The unauthorized act of an agent of a volunteer committee does not affect the respondent. (*Staleybridge case*, 1 O'M. & H. 66.)

—III. Receiving Money from the Candidate for Election Expenses.—Thus, where the respondent deposited 11,000*l.* with P., directing him in his letters to apply that money honestly, but not exercising personally, or by anyone else, any control over its expenditure, the respondent was held thereby to have made P. his agent for the election to almost the fullest extent possible, in so much that every

person employed by P. was an agent for the respondent. (*Bewdley case*, 1 O'M. & H. 19.)

—IV. **Receiving Letter of Authority from the Candidate.**—See, for instance, *The Galway case* (2 O'M. & H. 53), in which all the clergy were in this way constituted agents.

Where a letter was addressed by the respondents to “every manager, overlooker, and tradesman, and other person having influence in the town,” its effect was not to make every overlooker in the place an agent, but to make an agent of every person having authority down to the last grade; and anybody in that or any other grade, who *bond fide* took up the respondents’ side and acted on the circular, became their agent, and his acts bound them. (*Blackburn case*, 1 O'M. & H. 200.)

Where the respondent addressed a circular to certain voters, who had requisitioned him to stand, asking them “to enter heartily into the contest and secure the votes and interest of others,” it was held that every elector who received this circular and took part in promoting his election, did not thereby alone become an agent of the respondent to do illegal things. Cave, J., said: “If he does nothing but an illegal act, it appears to me that he is not acting in pursuance of that invitation; but if I find persons to whom that circular was sent are engaged in promoting the respondent’s election, in some instances by proper and legitimate means, but in other instances they have adopted illegal means, I then say there is some *primâ facie* case of agency which calls for an answer.” (*Norwich case*, 4 O'M. & H. 89.)

—V. **By inference from a previous Election.**—Where, at a previous election, the respondent had appointed B. to act

as his personal agent, and B. at that election handed over money for bribery expenses to W., who passed it on to A., who carried on organised bribery therewith, but W. went over to the other side before the present election, and A. was not regularly reappointed agent, but he did canvass for the respondent and bribed, it was held that the respondent was responsible for his acts, no matter how much he disclaimed his agency, and that nothing could sever the connection but the death of A., or his going abroad, or going over to the other side. (*Waterford case*, 2 O'M. & H. 2.)

Note.—On a similar principle, the vote of a paid agent of a candidate, who has retired before the poll, would seem to be invalid. (*Mallow case*, 2 O'M. & H. 20.)

—VI. By being Agent to another Candidate who has coalesced with the Candidate in question.—Candidates are, in general, liable after coalition for the acts of each other's agents; though if the agent said, "I give you this bribe to vote for R., but not to vote for T., because my object is that you should not vote for T.," he might thereby determine the joint agency. (*Norwich case* (1871), 2 O'M. & H. 39.)

—VII. By ratification of the Candidate after the Act.—A ratification after the act is equivalent to an authority given at the time, provided that the person sought to be made liable as principal is acquainted with the character of the act at the time when he ratifies. (*Tamworth case*, 1 O'M. & H. 81.)

So in *The Blackburn case* (1 O'M. & H. 201), the respondents were held liable for the consequences of a circular

sent round by a political association and afterwards adopted by the respondents themselves.

Persons who are not Agents.—A land agent is not necessarily an agent in election matters. (*Tamworth case*, 1 O'M. & H. 82.) Nor is *any* employment in election business necessarily enough to make the employee an agent: *e.g.*, a card-messenger was held to be no agent in *The Windsor case*, 1 O'M. & H. 3. (Cf. *Londonderry case*, 1 O'M. & H. 278.)

So, where K.'s house was proved to have been hired for an exorbitant sum for election purposes, and after that roughs were hired by an arrangement between K. and the respondents, it was held that there was no sufficient evidence to constitute K. an agent. (*Salford case*, 1 O'M. & H. 136.)

Where the respondent publicly stated that he was put forward by the bishop and his clergy, that implied that the bishop was his supporter; but it does not follow that the bishop had, therefore, made himself the respondent's agent. (*Galway case* (1874), 2 O'M. & H. 200.)

And the candidate is in no case responsible for the act of an agent, who does a corrupt act with a view to betray him. (*Stafford case*, 1 O'M. & H. 230.) For other instances of persons who are not agents, see the following cases (cited above):—*Staleybridge case*, 1 O'M. & H. 67; *Mallow case*, 2 O'M. & H. 21; *Windsor case*, *Id.* 89; *Salisbury case*, 3 O'M. & H. 132.

Duration of Agency.—Ordinary agency ceases at the close of the poll. (*King's Lynn case*, 1 O'M. & H. 208;

North Norfolk case, 1 O'M. & H. 243.) The respondent's privity must be shown after that. (*Salford case*, *Id.* 136.) And an agent's statements made twenty-six days after the election must not be put in evidence, without proving that the authority continued after the election was over. (*Longford case*, 2 O'M. & H. 12.)

Agency may, however, as has been shown, be inferred from agency at a previous election. (*Waterford case*, 2 O'M. & H. 2.)

Political Associations as Agents.—Associations as well as individuals may be agents for a candidate, if they come within the principle above set forth.

Lopes, J., said : "There may doubtless be in a borough a political association, existing for the purposes of a political party, advocating the cause of a particular candidate, and largely contributing to his success, yet in no privity with the candidate or his agents—an independent agency and acting in its own behalf. To say that the candidate should be responsible for the corrupt acts of any member of that association, however active, would be opposed to law. There may on the other hand be a political association in a borough, advocating the views of a candidate, of which that candidate is not a member, to the funds of which he does not subscribe, and with which he personally is not ostensibly connected, but at the same time in intimate relationship with his agents, utilized by them for the purpose of carrying out his election, interchanging communication and information with his agents respecting the canvassing of voters and the conduct of the election, and largely contributing to the result. To say that the candi-

date is not responsible for any corrupt act of such an association, would be repealing the Corrupt Practices Act and sanctioning a most effective system of corruption." (*Bewdley case*, 3 O'M. & H. 146.)

So, where an association suggested to the respondent that it would be desirable to give a conversazione, and he consented, and refreshments were provided at a nominal price, and the extra expenses were borne by the association and not returned in the respondent's "return of expenses," the Court held the election void on the ground of corrupt and illegal practices by the respondent's agents, *i. e.*, by the association. "Undoubtedly," said Cave, J., "it would be a wise plan, as soon as the candidate has been fixed upon, for these associations to suspend their operations until after the election is over." (*Rochester case*, 4 O'M. & H. 158; cf. *Wakefield case*, 2 O'M. & H. 102.)

Party associations are employed at ordinary times in doing general work for their respective parties, but at election time they naturally incline to expend their energies in supporting their party's local representative. "If their action is recognized by the candidate," said Cave, J.,—as appears by the shorthand notes—"that would be quite sufficient to make the association his agents: I do not mean every member of it; but it was sufficient to make the acts of the executive committee acts for which the candidate would be responsible, as long as he chose to acquiesce in their endeavouring to support him and procure his election." (*Hexham case*, 4 O'M. & H. 145.)

There are many acts which a political association are entitled to do, even to the extent of making known their views, which in one sense may amount to canvassing, while at the same time they do not pledge themselves to become

agents, nor does the proposed member become liable for their acts as agents. (*Walsall case*, 4 O'M. & H. 124.)

The candidate may acquiesce in all this and may continue to pay his subscription (see shorthand notes of Baron Pollock's judgment in the *Worcester case*, and 4 O'M. & H. 154); yet, if that is all, the association will not be his agents. There is no general rule as to the exact point of time when an association passes from being merely the agents of a party to being the agents of a particular candidate; it is a question of fact depending in each case on surrounding circumstances.

Where a Conservative association requisitioned the respondent to become their representative, and he attended some of their meetings to expound his views, and after that the connection ended, it was held that they were not agents. (*Westbury case*, 3 O'M. & H. 79.)

Where D. canvassed for the Working Men's Conservative Association, most of the funds of which came from the respondent's subscription, and were spent in promoting the respondent's canvass, but the evidence was that it was an independent agency, and that this body was acting in its own behalf, D. was held not to be an agent. (*Westminster case*, 1 O'M. & H. 92.)

For further remarks as to the general principle of these cases, see the judgment of Lush, J., in *The Chester case*, 44 L. T. N. S. 286, 287.

Rules of Evidence in Cases of Agents within the meaning of the Parliamentary Common Law.—The rules of evidence in these cases seem to follow the analogy of the rules which would be applicable in cases of master and servant, which is the analogy closest to this principle in the ordinary

common law. Thus, the statement of an agent made after a transaction is not evidence against the principal. (*Harwich case*, 3 O'M. & H. 64; *Cheltenham case*, *id.* 88.)

Proof of Corrupt Practice before Agency is established.— Note that by sect. 17 of the *Parliamentary Elections Act*, 1868 (31 & 32 Vict. c. 125), it is enacted that, unless the judge otherwise directs, any charge of corrupt practice may be gone into and evidence received in relation thereto before any proof has been given of agency.

But it is desirable that proof of bribery should not be given before agency is established, unless there is a reasonable expectation of establishing agency afterwards. (*Per* Bramwell, B., *Bristol case*, 2 O'M. & H. 29.)

Proof of corrupt practice will, however, be allowed before agency is established, where the petitioner has opened a case of agency. (*Guildford case*, 1 O'M. & H. 14.)

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PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE, E.C.

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